

In the Circuit Court of the United States in and for the  
Ninth Circuit, Northern District of California.

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XXXXXXXXXX XXXXXX XXXXXX XXXXXX XXXXXX :  
THOMAS H. FRENCH, :  
Citizen of the State :  
of New York. :  
vs. :  
JOSEPH KRELING, JOHN :  
KRELING and WILLIAM :  
KRELING, Citizens of :  
the State of California. :  
-----X----- :

This is a Bill in Equity, wherein it is alleged to the effect that Henry Brougham Farnie was and is, and at all times, a resident of the City of London, England, and the sole author and composer of the dialogue and words of the songs of the Operetta in the English language known as "Falka"; that the plaintiff is the sole owner of said Operetta; that the said Operetta is a dramatic and musical composition, and consists of parts to be spoken, and parts to be sung with suitable words, and of music composed for and intended to be played by an orchestra in conjunction with said words and said vocal parts; that the music was composed by one Chassaigne; that the dialogue and words of the songs of the Operetta are now, and always have been in manuscript, and never have been at any time published

printed, or in any way dedicated to the public; that the title of "Falka" is original, and never prior to the composition of said dialogue and words of the songs, been used, dedicated, or known in connection with any other dramatic composition of any kind; that the dialogue and words and operetta were transferred on or about the 24th of January, 1884, from said Farnie to the complainant; that the defendants the Kreling Brothers, are co-partners running the Tivoli Opera House, and producing operettas in San Francisco; that they, ~~xxx~~ between the 1st day of December, 1885, and the 25th of January, 1886, without the consent or authority of the complainant, or anyone having ~~the right to grant such authority, produce the said Operetta~~ of "Falka" unders aid title, and in the said production used the said dialogue and words of the songs as composed by the said Farnie, and owned by the complainant.

That the authorship of the said operetta has been frequently asserted in the different newspapers and other channels of communication, especially devoted to theatrical matters, and is well-known and recognized throughout the United States, and attached to the Bill, and marked Exhibit A, is the affidavit of the author to the above effect. That the Operetta has been performed legitimately under the authority of the author and complainant throughout the United States, to large profit, and that whenever so performed, a per centage of the gross receipts have been paid by the Theater or party producing said play, to the complainant. That the respondents have not rendered



any account or statement of the box-office receipts for their performance of "Falka".

The bill prays that the respondents be called upon to account for all of the gross-receipts of the said Tivoli Opera House at which "Falka" was performed, and that they be required to deliver up to the complainant copies of the box-office statements, that a discovery may be had, and respondents be compelled to disclose the number of copies possessed by them of the Operetta; that a Receiver be appointed to receive and take charge of all copies of said Operetta, and that such other relief be granted as equity may deem meet.

The ~~bill~~<sup>petition</sup> of complaint contains first of all, a specific denial of all the material allegations of the bill, and allege that the Opera has been dedicated to the public, with the consent of the authors, and was entered in Stationer's Hall, a Register, in said City of London.

The respondents admit that they are the proprietors, and run the Theater known as the Tivoli Opera House. They allege that they purchased in the open market a printed and published copy of an Operetta known as "Falka". They admit that they produced the Operetta hereinbefore mentioned for the period of twenty-two days, beginning on the 4th day of January, 1886.

PROOFS TAKEN.

Henry Farnie, residing at Oxford Mansions, London, England, testifies under a commission duly issued out of this Court, and directed to the Consul-General for the United States, London, England. He states that he is a dramatic author, formerly residing at Oxford Mansions, London, his present residence is at the "Albany" Piccadilly, London, England, and has always been a resident of London, England; that he is the absolute author of the dialogue, words and songs of the Operetta known as "Falka"; that the Operetta of "Falka" was adapted from the French original entitled "Le Petit Pigeon", written by Leterriere and Van Loo, and it was adopted into the English language by himself, Farnie; that the music was written by Francis Chassaigne; that the Operetta consists of ~~xx~~ a libretto in three Acts, and a musical score; that the dialogue and words and songs of said Operetta, and spoken parts of the Operetta have never been published. The musical score has been published, with the words of the songs so set to music. No other publication of the Operetta of "Falka" has, in any form whatever taken place; that the dialogue, libretto, and stage business etc., have never been published; that the title "Falka" is an original title, composed and originated and affixed to the said original adaptation by himself, and prior to the composition of the said dialogue and words the songs of the said Operetta of "Falka" had never been used in connection

with any other composition or Operetta whatsoever. That said title was valuable property in connection with its use as a designation for the said Operetta, and was the means of identifying said work. Its value arises as a trademark from the Operetta having been played and known throughout the entire British Dominion and Colonies, under the designation of "Falka".

On the 24th day of January, 1884, after the composition of said Operetta he was the sole owner and proprietor thereof. On said date there was a sale of said property made. That he sold all of the real title and interest he had in the adaptation of "Falka" to Mr. Samuel French for his use in the United States of America only. The consideration named in the assignment was one dollar. The actual consideration was an agreed portion of the profits of the representation. That he never assented to, or acquiesced in the public representation of the said Operetta by the respondents themselves, or by any other person not specially licensed to represent the same. That the authorship of said Operetta has been asserted in newspapers and other channels of communication, devoted to Theatrical matters, and said authorship is known and recognized throughout the United States, and has been constantly, during a period of three years; that said Operetta has been publicly performed throughout the United States by Mr. Samuel French, to whom it was assigned by him before publication. That the libretto never has been published; that he received profit from such performances under the



agreement he made with Mr. Samuel French. That said Operetta is valuable property. That royalties have always been paid to Mr. Samuel French, under the assignment aforesaid, but to what extent the witness is not prepared to say. That he repeats his reply to the sixth interrogatory, viz: the dialogue or spoken libretto of the Operetta has never been published. The musical score has been published with the words of the songs so set to music. No other publication of the Operetta of "Falka" has in any form whatever taken place. If any copy of said unpublished libretto has come into the use or possession of the Respondents, or any other unauthorized person, then I say that such copy has ~~been obtained by illegal means and is in fact a theft and~~ fraud upon the proprietors of said Operetta of "Falka".

"I say my English adaptation of the French piece Le Droit D'Ainesse, entitled by me "Falka" ~~xxx~~ is in many respects an entirely original work"; that to-wit, from the middle of the second Act to the end of the third Act, the plot and situations are entirely original. Four of the characters, viz: the Holy Father, the Princess Alexina, the soubrette Mina, and the Senechal, as also all the situation and dialogue appertaining to the characters, are entirely my own creation. The entire English dialogue of "Falka" is original and not one word translated from the French. The original French piece in fact only furnished me with the main outlines of the plot".

~~The~~ cross-interrogatories or questions directed by the respondents called for simply a reiteration of what



his direct answers were.

To the fifth cross-interrogatory, which is "State fully and particularly what personal knowledge if any you possess with relation to the composition of said title, and how you know by whom said title was composed originally, or by whom affixed to the original or any adaptation", he says :

"As I have repeatedly stated before I composed the title and affixed it to the Operetta. I never knew the words in my twenty-five years of Dramatic life used as the title for any dramatic or other composition of a similar nature." He also says that the property was his on January 24th, 1884.

To the eighth cross-interrogatory he says: "I repeat the authorship of 'Falka' was recognized in newspapers everywhere. I have none of the newspapers with me at this office, but can produce any quantity if required.

The ninth cross-interrogatory is "Will you swear that said Operetta 'Falka', has never been published in book form by or with your consent, or the consent of the original authors or composers, or that the same has never been published or sold in book form in England or the United States, or that the same is not entered in Stationers Hall, London, England."

He answers: "I swear that the libretto of 'Falka' has never been published to my knowledge in book form by or with my consent as its author, and that the same has never been published in England, or the United States of America in book form, with my knowledge or consent. The title of

the libretto has been entered at Stationers Hall, London, England, and not the libretto itself, but this does not imply publication, and as a matter of fact, there has been no such publication."

The tenth interrogatory is, "Will you swear that these defendants and respondents, did not purchase a copy of the said Operetta of "Falka" in book form as published and sold to the public in open market in England, and the United States".

He answers "To the tenth cross-interrogatory I swear that the respondents could not have purchased in a legitimate manner any copy of the libretto of said Operetta "Falka" the same never having been published or dedicated or sold to the public, either in England or the United States of America, and that if any such property has come into the possession of the respondents it has been dishonestly acquired as I have before stated." Signed, H.B.Farnie. Examination taken and reduced to writing, and by the witness subscribed and sworn to this 11th day of January, A.D. 1887, before T. M. Waller, Commissioner, and certified to before Thomas M. Waller, Consul General of the United States of America, at London, England, before whom, he certifies, that the witness Henry Brougham Farnie appeared.

The testimony of Thomas H. French, the complainant, taken before a Commissioner in New York, is to the effect that he purchased the Operetta from Farnie on the date named by French, and that the same is valuable property, and is in manuscript except certain portions referring to

the song words; that the unauthorized production of Messrs. Kreling, has greatly damaged the complainant, and that he will not receive any royalty from the legitimate production of said Oper~~atta~~ of "Falka" in San Francisco. That his personal knowledge is that the Operetta was in manuscript, and some of it in book form. He knows this, receiving it from the author himself. He knows personally that it has not been dedicated to the public; that he has been a publishing manager for twenty years; that the name of an Opera and play is of value. He knows that the Operetta of "Falka" was not published fully, and that enough to secure the complainant his rights in this country under the several decisions of the United States Courts, was kept in manuscript.

The testimony of Alfred Hays of London, England, was taken by the respondents. It is important, and is to the following effect:

His name is Alfred Hays; business address, 26 Old Bond street, London, England. He carries on the business of musical publisher. He knows the comic opera of "Falka".

Direct question by the respondents No.3: "Did you cause the comic opera "Falka" to be published in book form, and if so, in what year, and where was the same circulated?"

To the third interrogatory he saith "Certainly not.  
The words were printed for the use of the artists, to  
learn their respective parts. The book was printed in 1883  
and was never in circulation. Such books were kept by myself at my private residence, under lock and key, and

copies were handed to the stage manager by myself. As he required them, he would hand them to the artists to be used by them, only for the purpose of learning their respective parts."

Question No. 4: "Have copies of such published book been in circulation since the time of publication, in the City of London, England?"

Answer: "They were never published and circulated. The book was only printed for the convenience of the artists to enable them to learn their parts."

Question No. 5: "Please look at the book marked Respondent's Exhibit A for identification, and state if the same was published at your place of business with others, being copies of the one now shown you?"

Answer: "I have looked at the Exhibit referred to, and I say that said book nor any counterpart thereof has never been published. It was merely printed for the private use of the artists as is the custom in this country (England) and is not now public property."

Question No. 6: "Do you know E. F. Steyne, Esq., of the Comedy Theater?"

Answer: "I do."

Question No. 7: "Did you file for record and cause to be entered at Stationers Hall, London, a copy of the book now shown you?"

Answer: "I did not. I have myself been to Stationers Hall, London, and I say there is no copy on file there, of the book now shown to me, nor is there at said Stationers



Hall, any book or printed copy of said Opera filed for record. It is not the custom to put on record or file copies of such works. It is not necessary before producing any play to file at Stationers Hall, the entire play, ~~either in book form, or manuscript form.~~

In answer to question No. 11, he says: "I was not the publisher of the book. As before stated it was never published. The manuscript was handed to me for the purpose of being printed by Mr. H. B. Farnie."

In answer to question No. 12 he says: "An author or proprietor of a new play or opera, in order to protect his interest, registers at Stationers Hall, London, the title of the piece, giving particulars as to the author or composer thereof. I handed to the complainant to be annexed hereto as Exhibit B, a copy of an entry made by myself on the 30th day of October, 1883, in regard to said Opera "Falka", and such entry is the only thing that is requisite, according to English law to protect the right of representation in the United ~~Kingdom~~ Kingdom."

To the sixteenth and final interrogatory he says: "As before stated I never published such book, nor was such book ever in circulation or offered for sale, nor have any proceedings ever been taken or instituted against me for publishing books like the one now shown to me, for the simple reason that I have never published such."

I ask the Court now to look at Respondents Exhibit lor A. It is spoken of in the interrogatories directed by Respondents to Mr. Alfred Hays of London, as Respondents

A. It is marked by the Clerk of this Court as Respondents Exhibit 1.

This Exhibit was sent on by the respondents from San Francisco to London, and for the purpose of confronting Mr. Hayes with the same. It is the book which was used by the respondents in their production of the Opera in San Francisco.

The Court will observe that as Mr. Hays testifies, it was private print, for the use of the artists, and right under the title occurs the words "Right of representation and reproduction reserved." On the first page inside the cover in ink are written the names of the original cast in America, as follows: "Original cast in America, produced for the first time in America, Haverly's Broad Street Theater, Philadelphia, Tuesday March 4th, 1884." On the second page, inside the cover occurs in the same handwriting, the following words: "The property of F.J. McCarthy, presented to him E. F. Steyne, Comedy Theater, London, England."

The respondents in their interrogatories directed to Mr. Hayes, ask him if he knows Mr. E. F. Steyne of the Comedy Theater, London, and he answers that he does. This makes the connection between Mr. Steyne of the Comedy Theater, London, and Mr. McCarthy, to whom, as is written this private print was given.

If the Court will look at the first page inside the cover, it will see that the part of "Tekeli", Sergeant of the Patrol, was taken in Philadelphia on the production on March 4th, 1884, by F. J. McCarthy. Thus the method of

getting this print from England to America is shown. Mr. Steyne of London, presents this private print to Mr. McCarthy, both being actors, one in England, and the other in America. From Mr. McCarthy's hands, it reached the respondents, and they admit that this is clear. In fact, they themselves, as I have above stated, sent it to England, hoping to prove that it was a publication, and thus avoid the situation in which they found themselves placed in the suit of Goldmark vs. Kreling, better known as the "Nanon" case.

No further argument is necessary to be presented in this case. The law applicable to the case of "Nanon", and the law as interpreted in the "Nanon" case is directly pertinent to this case, and in all respects is conclusive.

#### R E S U M E.

The authorship of the libretto and music, and the ownership of the same have been proven. The transfer of the title of the same for the United States to the complainant, is shown. The unauthorized production is proven. The fact that the production of "Falka" was given, is admitted in the pleadings. The use of the private libretto by the respondents unauthorized, and in the hope of showing it to have been a published libretto, is also proven. The respondents have fallen into their own trap in endeavoring

to have Mr. Hays of London prove this to be a publication, because on the contrary he testifies most firmly and conclusively, that instead of being a publication, it was just the opposite. He further adds to his deposition, a copy of the entry of the title in the Stationers' Hall Register.

The complainant respectfully submits that the prayer of the bill should be granted, that an accounting should be rendered, and that the copies of the libretto in the hands of the respondents should be delivered up, and that whatever further and equitable relief is meet in the premises should be granted.

*James D. R. Hays*  
Solicitor for Complainant.

*In Goldsmith v. Keeling (Narrow case)*

*11 Sawyer 215*

*Do v Do, 13 Sawyer 310*

*Done on Copyright 97, 121, 383, 526.*



In the Circuit Court of the United States, Ninth Judicial  
Circuit, Northern District of California.

Thomas H. French.

Complainant.

-vs-

Joseph Kroling, et.als.

Respondents.

No. 4035 In Equity

Interrogatories to be pro-  
pounded on behalf of respondents herein to Alfred Hays Esq.,  
26 Old Bond Street and 4 Royal Exchange Buildings, London,  
England.

Q. 1. State your age, residence and occupation.

A.

Q. 2 Do you know of an Opera Comique in three acts alleg-  
ed to have been written by H. B. Farnie and known as "Falka"?

A.

Q. 3 If yea; Did you cause the same to be published in  
book form, and if so, in what year, and where was the same  
circulated?

A.

Q. 4 Have copies of such published book been in circula-  
tion since the time of publication, in the City of London,

Q. 5 Please look at book marked " Respondents Exhibit A" for indentification and state if the same was published at your place of business, with others, being copies of the one now shown you?

A.

Q. 6 Do you know E. P. Steyno Esq. of the Comedy Theatre London, England?

A.

Q. 7 Did you file for record and cause to be entered at Stationers Hall, London, a copy of the book now shown you? If yea; State in what year you so filed the same.

A.

Q. 8 Is there now of record or on file at Stationers Hall London a copy of the Book shown to you, or any book or pamphlet containing the comic Opera " Falka", heretofore mentioned and described? If yea; When was such book or printed copy of said Opera filed for record?

A.

not

Q. 9 Is it necessary before producing any play to file at Stationers Hall the entire play either in book or manuscript form, and is not such record open to the public for inspection.

A.

Q. 10 Was there not <sup>for record</sup> filed at Stationers Hall by H. B. Farnie or in his behalf, a book or manuscript containing the Comic Opera " Falka"? If yea, when was the same filed?

A.

Q. 11 Where if you are the publisher of the book now shown did you get the manuscript from which the publication now

shown you was made?

A.

Q. 12. State fully and at large the duties of an author in the filing of his productions at Stationers Hall and how much thereof must be filed, if not the whole, of a play or opera, and state fully what steps were taken with reference to the Opera "Falka"?

A.

Q. 13. State fully any other matter which will be of benefit to these respondents.

A.

Q. 14. Since the year 1883 have any proceedings been instituted against you for publishing books like the one now shown to you, containing said Opera "Falka", for circulation, or for selling the same in the open market, if you ever did so sell the same?

A..

Respectfully Submitted.

H. H. Lowenthal.

Solicitor for Respondents.

( ENDORSED )

Service of the within Interrogatories, to be propounded to Alfred Hays, London England, receipt of a true copy thereof, and service of notice of the filing of said interrogatories, and receipt of such notice is hereby admitted on this 30th day of March, 1888.

Joseph D. Redding,

Solicitor for Complainant.

Filed March 30, 1888.

L. S. B. Sawyer,

Clerk

by F. B. Monckton.

Deputy Clerk.

George H. Miller, of the

County of

State of New York, do hereby certify that the within and the day filed with the Clerk of the above Court are the following documents, of which two copies are now deposited in the records of the Court, and a copy of each of them is now deposited in the records of the County of

County of

George H. Miller,

Deputy Clerk of the Court.

Witness my hand and seal of office this

day of

in the year of our Lord one thousand eight hundred and



In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

Thos. H. French

Complainant

VS.

Joseph Kreling, et al

Respondents.

Take notice that the Complainant has this day filed with the Clerk of the above Court his Cross-Interrogatories, of which the annexed are true copies, to be propounded to Alfred Hays Esq., 26 Old Bond Street, and 4 Royal Exchange Buildings, London, England.

Dated April 4<sup>th</sup> 1888.

*Joseph D. Redding*  
Solicitor and of Counsel for Complainant.

To, H. H. Lowenthal Esq.

Solicitor for Respondents.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

Thomas H. French

Complainant

VS.

No. 4035. In Equity.

Joseph Kreling, et als.

Respondents

Cross-Interrogatories to be propounded on behalf of Complainant herein to Alfred Hays Esq., 26 Old Bond Street and 4 Royal Exchange Buildings, London, England.

Q. 1. If in answer to the third question of the direct interrogatories you state that you have published the Opera Comique, written by H. B. Farnie in book form, will you answer yea or nay, whether the same was published by you under any consent, or contract, or agreement with said H. B. Farnie or any other person, who had any interest in said Operrata?

Q. 2. If in answer to question Four of the Direct Interrogatories, you state that such published book has been in circulation since the time of its publication, in the City of London, England, will you answer yea or nay, whether the same has been in publication under the consent and agreement of the composer of said Operrata herein, H. B. Farnie, or any person having any interest therein as composer or assignee of composer?

Q. 3. Will you please state whether you know the composer of

said Operrata, H. B. Farnie to have ever dedicated his rights as composer or author to any third party, or to any publisher by the means customary under your English Statutes, and will you state all and singular whatever you know regarding the present condition of the libretto of said Operrata as being in manuscript or otherwise.

Respectfully submitted

Joseph D. Redding,  
Solicitor for Complainant.

Enacted: Service of a copy of the  
within notice and of Complainant's cross  
interrogatories to be propounded to Alfred  
Hays by 26 Old Bond Street, and of  
Royal Exchange Buildings London England  
is hereby admitted  
San Francisco April 4 1888 J. H. Townshend  
D.

I, L. S. B. SAWYER, Clerk of the Circuit Court of the United States for the  
Northern District of California, do hereby certify the foregoing to be a full, true and  
correct Copy of Interrogatories & Cross Interro-  
gatories to be propounded to Alfred Hays  
filed March 30 1888 in the Cause entitled  
Thomas H. French - vs - Joseph Redding et al.  
No 4035 in said Circuit Court

Attest my hand and the seal of said Circuit Court, this  
6<sup>th</sup> day of April - A. D. 1888

L. S. B. Sawyer, Clerk.

By

D. M. Moulton  
Deputy Clerk.

of the Ninth Judicial Circuit  
in and for the Northern District  
of California - U. S. A.

Thomas H. French  
Complainant — and  
Joseph Treling, John Treling,  
and William Treling —  
respondents — number 4035.

Depositions of Alfred Hays  
a witness sworn and examined  
under and by virtue of a  
Commission issued out of  
the Circuit Court of the United  
States of the Ninth Judicial  
Circuit in and for the  
Northern District of California  
U. S. A. in a certain cause  
pending and at  
issue between Thomas  
H. French, Complainant  
and Joseph Treling, John Treling,  
and William Treling,  
respondents: -

Alfred

My commission

Commissioner



Alfred Hayes of No. 26 Old  
Bond Street and No. 4 Royal  
Exchange Buildings, London  
England, being duly sworn  
to, speaks the truth, the whole  
truth and nothing but the  
truth depose and say as  
follows:—

First.

To the first interrogatory he  
saith, My name is Alfred  
Hayes, my business addresses  
are No. 26 Old Bond Street,  
and No. 4 Royal Exchange  
Buildings, London England  
where I carry on business  
as a Music Publisher—

Second

To the second interrogatory  
he saith, Yes. I do.

Third.

To the third interrogatory  
he saith, Certainly not - The  
words were printed for the  
use of the Artists to learn  
their respective parts - the book  
was printed in the 1883 and  
was never in circulation - such  
books

My name as witness  
Commissioner

Alfred Hayes

under } were kept by myself at my  
cont. } private residence under lock  
// and keys and copies were  
handed to the Stage Manager  
by myself as he required  
them and he would hand  
them to the Artists to be  
used by them only for the  
purpose of learning their  
respective parts.

Fourth. To the fourth interrogatory he  
saith, They were never published  
or circulated - the book was  
only printed for the convenience  
of the Artists engaged to enable  
them to learn their parts.

Fifth. To the fifth interrogatory he  
saith, I have looked at the  
exhibit referred to - and I  
say that said book, nor any  
counterpart thereof, has never  
been published - it was  
merely printed for the private  
use of the Artists - as is the  
custom in this Country - and was  
not and is not now public property.

Sixth.

Myself in witness

John Hays

Sixth. To the sixth interrogatory  
he saith, Yes.

Seventh. To the seventh interrogatory  
he saith, No. I did  
not -

Eighth. To the eighth interrogatory  
he saith, I have myself been  
to Stationers' Hall, London, and  
say there is no copy on file here of the book  
now shown to me - nor is there at said  
Stationers' Hall any book or printed  
copy of said opera filed for record -  
it is not the custom to put on  
record or file copies of such works.

Ninth. To the ninth interrogatory  
he saith, No - it is not -

Tenth. To the tenth interrogatory  
he saith, No - it is not the  
custom to place on record such books  
or Manuscripts -

Eleventh

Myself as witness.

Alfred May

Eleventh. To the eleventh interrogatory  
he saith, I was not the publisher  
of the book - as before stated,  
it was never published - the  
manuscript was handed to me  
(for the purpose of ~~setting~~ <sup>being printed</sup>) by Mr.  
H. B. Larine. D. M. C.

Twelfth. To the twelfth interrogatory  
he saith, The author or  
proprietor of a new play or  
opera in order to protect  
his interest registers at  
Stationers' Hall London.  
The title of the piece giving  
particulars as to the author  
or composer thereof -  
hand to the Commissioner  
to be annexed hereto as  
exhibit **B** copies of an Entry  
made by myself on the  
thirtieth day of October 1873  
in regard to said Opera -  
"Falke" - and such Entry  
is the only thing that is requisite  
according to English law to protect  
the right of representation in the  
United Kingdom - Twelfth

Monmouth, 2nd 1873



11th. To the 11th interrogatory  
he said, I know of nothing.

12th. To the 12th interrogatory  
he said, As before stated, I  
never published such book -  
nor was such book ever  
in circulation or offered  
for sale - nor have any  
proceedings ever been taken  
or instituted against me for  
~~publishing~~ publishing books like  
the one now shown to me -  
for the simple reason that  
I have never published such.

## Cross Interrogatories.

1st  
+

To the first cross interrogatory  
he said, My answer to the  
kind direct interrogatory was  
in the negative - That  
I did publish and sell was  
the lyrics of said Opera -  
and I hand to the Commissioner  
to

Under a cover

Sept 11th

First } to be annexed hereto as exhibit C  
+ } a copy of said book -  
and } also sent to the Commissioner  
// } to be annexed hereto as  
exhibit D copy of the entry  
at Stationers' Hall of said  
book -

Second } To the second cross interrogatory  
+ } he said, My reply to the  
fourth interrogatory was  
in the negative -

Third } To the third cross interrogatory  
- } he said, In answer to the  
first part of this cross  
interrogatory I say that I  
know Mr. F. B. Farnie  
assigned to Mr. French the  
right to produce said  
Opera "Tarka" in the  
United States of America;  
and I say that the present  
condition of the libretto of said  
Operetta "Tarka" is that it  
is in printed form - and I have  
already in my reply to the first cross inter-  
rogatory put a copy thereof in as exhibit C.

Examination taken, reduced  
to writing and by the witness subscribed  
and sworn to this 24th day of  
March 1899 before me.

Wm. H. Hays

Time of making the Entry.	Title of Dramatic Piece or Musical Composition.	Name and Place of Abode of the Author or Composer.	Name and Place of Abode of the Proprietor of the sole Liberty of Representation or Performance.	Time and Place of First Representation or Performance.
October 30, 1883.	Falka. Opera boumques Written by H. B. Fannie. composed by F. Chassaigne.	F. Chassaigne. 64, Boulevard de Strasbourg. Paris. Henry Brougham Fannie. 2, Dancs Inn. Strand. Middlesex.	Alfred Harps. Glydesdale Lodge, Cavendish Road, St. John's Wood, Middlesex.	29 <sup>th</sup> Oct. 1883. Comedy Theatre, Pantons St., Haymarket, Middlesex.

AT THE EXECUTION OF A COMMISSION FOR  
THE EXAMINATION OF WITNESSES BETWEEN  
M. T. French, Compt. and  
S. T. French, John French and  
William French, Witnesses  
THIS EXHIBIT NUMBERED 5 AND HERETO  
ANNEXED WAS PRODUCED AND SHOWN TO

Alfred Harps  
AND BY HIM DEPOSED UNTO AND SUBSCRIBED  
BY HIM AT THE TIME OF HIS EXAMINATION  
BEFORE

COMMISSIONER.

WITNESS.

I hereby certify that the above written is a true Copy of an Entry in the Book of Registry of Copyrights and Assignments kept at the Hall of the STATIONERS' COMPANY, pursuant to Act of Parliament, 5 & 6 Vict., c. 45.

Witness my hand, this *tenth* day of *May*, 18 *88*

*Marston Sherington*  
Registering Officer appointed by the Stationers' Company.



*Right of Property in England*





Kingdom of Great Britain and Ireland, }  
City of London England. }  
Thomas M. Walter, Consul General  
of the United States of America  
at London England, the  
Commissioner named in  
said Commission, do hereby  
certify that the witness Alfred  
Frays appeared before me, and  
after being duly sworn, his evidence  
was taken down (by Francis  
William Tugout, Deputy Consul  
General of a disinterested person  
appointed by me as Clerk  
for that purpose) and read  
over and corrected by him  
after which he subscribed the  
same in my presence on the  
eleventh day of May 1888 at  
the office of the Consulate -  
General of the United States  
of America, situate No. 12 West  
Helen's Place, Bishopsgate  
Street in the City of London  
England aforesaid and that I  
have personal knowledge of said  
witness -

Witness my hand

Th



I witness whereof  
have subscribed at  
my hand and affixed  
my official seal  
at London aforesaid  
this the fourteenth  
day of May  
1895.

Witness my official  
hand and seal  
Comptroller  
General



U. S. Circuit Court, N. Dist. of Cal.

French

No. 4035

Seeling

Complainant's Exhibit A

Examiner

The Latest London Success.

# Talka.



Comic Opera.

IN 3 ACTS.

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English Version by

H. B. FARNIE.

MUSIC BY

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United States Circuit Court . Ninth Circuit.  
District of California

-----: )  
Thomas H. French, )  
A citizen of the State of New York, brings )  
this his bill, )  
-----: )

-vs- )  
Joseph Kreling and John Kreling, William )  
Kreling, citizens of the State of California )  
-----: )

Your orator complains :-

- (1) That he is a citizen of the United States and a resident of the State of New York and is the sole proprietor of a certain operetta in the English language known as "Falka".
- (2) That Henry Brougham Farnie at all the times hereinafter mentioned was and now is a resident of the city of London, England, and the sole author and composer of the dialogue and words of the songs of said operetta, which is an adaptation into the English language original with said Farnie.
- (3) That the said operetta Falka is a dramatic and musical composition and consists of parts to be spoken and of parts to be sung with suitable words and of music composed for and intended to be played by an orchestra in conjunction with said words and said vocal parts. That said music was composed by one Chassaigne.
- (4) That the dialogue and words of the songs of the said operetta Falka are now and always have been in manuscript and have never at any time been published, printed or in any way dedicated to the public or made in form of publication.



(5) Your orator further alleges that the title "Falka" was and is an original title, originated, composed and affixed to the said original adaptation by the said Farnie and never had, prior to the composition of said dialogue and words of the songs of the said operetta, been used, dedicated or known in connection with any other dramatic composition of any kind; and the said title has become well and favorably known as an exceedingly valuable property in connection with its use as a designation or name for the said operetta so originated and composed by the said Farnie, and as a means of identifying his said work.

(6) Your orator further alleges that on the 24th day of January 1884, and after the said dialogue and words of the songs of said operetta "Falka" had been thus composed and written by the said Farnie, the said Henry Brougham Farnie, being then the sole owner and proprietor thereof, sold, assigned, transferred and set over unto your orator, his executors, administrators and assigns to his and their own use and benefit, the said dialogue and words of the songs of the said operetta, and the manuscript thereof, and all the right, title and interest of said Farnie in and to the same and the production thereof on any stage in the United States, and in and to all profit, benefit and advantage that should or might arise from the production of said operetta in the United States.

(7) Your orator further alleges upon information and belief that the respondents *Joseph John William Kreling and* ~~Kreling~~ were, during the years 1885 & 1886 copartners in business in the city of San Francisco and were the proprietors, lessees or managers of a certain place of amusement situated in the city of San Francisco, California, known as the Tivoli Opera House.



That said respondents between the *first* (1) - day of *December* 1885 and the 25th day of January 1886, without the consent or authority of your orator, or any one having the right to grant such authority, and without having paid any compensation whatever for the right to produce the same, did produce the said operetta under the said title "Falka" and in said production used the said dialogue and words of the songs as composed by the said Farnie and owned by your orator.

(8) Your orator further alleges that neither the said Farnie nor your orator has even assented to or acquiesced in the public representation of the said operetta by the said respondents, nor by any one not specially licensed to represent the same; and the authorship of said operetta has been frequently asserted in the different newspapers and other channels of communication specially devoted to theatrical matters and news and has been and is well known and recognized throughout the United States. *and attached hereto is marked Exhibit "A" is the affidavit of the author to the above effect, which affidavit is made a part of this Bill.*

(9) That the said operetta has been, under authority granted by the author of the said operetta and by your orator, publicly performed throughout the United States, by reason whereof large profit has been realized by the said author and your orator; and that the said operetta is an exceedingly valuable property to your orator. That whenever the same has thus been produced, the persons authorized to produce the same have always paid to your orator ~~the same~~ <sup>as percentage</sup> upon the gross amount received from said productions by way of compensation and royalty, which is a fair and reasonable compensation for the right to produce the same.



(10) That the respondents have not rendered any account or statement of the box office receipts at their said place of amusement to your orator or to any one in his behalf, and have wholly neglected to pay any royalty for such performances by them, although the gross receipts for the production of the said operetta "Falka" at their said place of amusement has, as your orator charges on information and belief, amounted to a very large sum of money; and the said respondents refuse to render any such account or make any payment to your orator.

YOUR ORATOR THEREFORE PRAYS : that the respondents be required to answer the premises under oath and to account to and with your orator for all the gross receipts of their said place of amusement known as the Tivoli Opera House in the city of San Francisco, at which the said operetta has been performed; and that they be required to deliver to your orator copies of the box office statements showing the gross receipts at the said place of amusement at each performance of the said operetta so produced as aforesaid; and that they be required to pay over to your orator as damages caused by said unauthorized performances, a sum equal to ten per cent. upon the gross receipts, with interest thereon.

That a discovery may be had and the respondents be compelled to disclose the number of copies possessed by them of the said operetta and as to where and by what means the respondents obtained the same or any colorable imitation or simulation thereof.

That a receiver be appointed to receive and take charge of all copies of the said operetta in the possession or under the control of the said respondents for the purpose of transferring

the same to your orator.

That your orator have such other and further relief in  
City & County of New York, as ;  
the premises as may seem meet and the nature of the case may  
require.

Joseph D. Redding  
Solicitor & of Counsel for  
Complainant

over

Sworn to before me

January 30<sup>th</sup> 1886.

Spencer C. Doty

NOTARY PUBLIC

Notary Public in and for the City and County of New York, and also Clerk of the Supreme Court of the City and County of New York, the same being a Court of Record, The HENRY C. DOTY

Spencer C. Doty



City & County of New York, ss :

Thomas H. French being duly sworn, says : he is the complainant herein; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and that, as to those matters, he believes it to be true.

Sworn to before me )

January 30<sup>th</sup> 1886. )

*Thomas H. French*

*Spencer C. Doty*

Notary Public,

STATE OF NEW YORK,  
City and County of New York, } ss.

I, **JAMES A. FLACK**, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, DO HEREBY CERTIFY,  
That

*Spencer C. Doty*

before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said City and County, duly appointed and sworn and authorized to administer oaths to be used in any Court in said State, and for general purposes; and that his signature thereto is genuine, as I verily believe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court and County, the day of

*James A. Flack* 1886

Clerk

*this 11<sup>th</sup> day of March 1886*

*Before me*

*J. P. C. Gentry*

*A Commissioner to administer Oaths  
in the Supreme Court of Judicature*



J.R.G.

I Henry Brongham Farnie  
of No. 65 The Albany Piccadilly in the  
County of Middlesex Dramatic Author  
do solemnly and sincerely declare that

1. That no printed libretto of my opera  
named "Falca" has ever been published

J.R.G.  
J.R.G.  
J.R.G.  
J.R.G.

and was only printed for private use in the London Theatre where  
it was produced and that I never authorized its use by  
Messrs. Hagling Brothers & Co. San Francisco U.S.A.

And I make this solemn declaration  
conscientiously believing the same to  
be true and by virtue of the provisions  
of an Act made and passed in the fifth  
and sixth years of the reign of his late  
Majesty King William the Fourth intituled  
"An Act to repeal an Act of the present  
Session of Parliament intituled "An  
Act for the more effectual abolition of  
Oaths and Affirmations taken and made  
in various departments of the State"  
and to substitute declarations in lieu  
thereof and for the more entire  
suppression of voluntary and extra  
judicial oaths and affidavits and to  
make other provisions for the abolition  
of unnecessary oaths"

Declared and Subscribed  
at 32 Caven Street Strand  
in the County of Middlesex  
this 11<sup>th</sup> day of March 1886  
Before me

H. B. Farnie.

J. F. E. Grogan

A Commissioner to administer Oaths  
in the Supreme Court of Judicature



1 Circuit Court of the United States Ninth  
2 Circuit, District of California —  
3 — In Equity. —

4  
5 Thomas A. French

6 — vs. —

7 Joseph Kreling,  
8 John Kreling<sup>and</sup>  
9 William Kreling.  
10

11 And now come the above named de-  
12 fendants and respondents, and now and at all  
13 times hereafter saving to themselves all and all  
14 manner of benefit, or advantage of exception, or  
15 otherwise, that can or may be had or taken to  
16 the many errors, uncertainties and imperfections  
17 in said Bill contained, and answering the same  
18 or so much thereof as these defendants are advis-  
19 ed is material or necessary for them to make  
20 answer to, say. —

21 First:

22 These defendants say, to  
23 their or either of their knowledge or belief, they or  
24 either of them do not know, and have never been in-  
25 formed save by said plaintiffs Bill of complaint and  
26 cannot set forth as to their or either of their belief  
27 or otherwise, whether the said complainant is a cit-  
28 izen of the United States, or a resident of the State of  
New York. And deny that the complainant is



PAGE

2

1 the sole proprietor, or at all, of a certain Operetta  
2 or any Operetta in the English language known  
3 as "Talka".

4 Second.

5 These defendants say, to  
6 their or either of their knowledge or belief, they  
7 or either of them do not know and have never been  
8 informed, save by said plaintiffs bill of complaint,  
9 and cannot set forth as to their belief or otherwise,  
10 whether, one Henry Brougham Farnie at all, or at  
11 any time was or now is a resident of London, Eng-  
12 land or the sole author or composer, or either, of  
13 the dialogue or words of  
14 the songs of said operetta or which is an adapta-  
15 tion into the English language original or  
16 otherwise with said Farnie.

17 Third.

18 And these defendants  
19 deny that the dialogue and words, or either, of  
20 the songs of said operetta "Talka" are now and  
21 always have been in manuscript, or have never  
22 at any time been published, printed or in any  
23 way dedicated to the public or made in form  
24 of publication, but on the contrary said operetta  
25 in its entirety including the dialogue, the words  
26 of the songs, and music, and every thing appertain-  
27 ing to said operetta were published in Book  
28 form in the English language by Alfred Hays  
in the city of London, England, and publicly sold  
at the places of business of said Alfred Hays at  
the city of London, England, and other publishing



1 houses, by and with the consent of the composers and  
2 authors of said operetta, since the year 1883 and  
3 said operetta as published was entered in the  
4 State Hall, a register in said city of London, sub-  
5 sequent to the publication of the same. That the  
6 vocal score and songs, and the words of the songs  
7 were also published and sold in book form  
8 throughout England and the United States by and  
9 with the consent of the author, and these defend-  
10 ants who have for several years last past been the  
11 proprietors of a theatre known as the "Tivoli Opera House"  
12 in the city and county of San Francisco, State of  
13 California, and as such have produced in their said  
14 Theatre, a large number of operas, Grand and Comique,  
15 and these defendants in open market among others  
16 purchased a printed and published copy of an  
17 operetta known as "Tarka" in its entirety and pro-  
18 duced the same at their said opera house in the  
19 city and county of San Francisco, which said oper-  
20 etta was prior to the production thereof, duly de-  
21 dicated to the public as aforesaid. —

22 Truth:

23 And these defendants  
24 say to their or either of their knowledge or  
25 belief, they or either of them do not know and  
26 have never been informed save by said plaintiffs  
27 Bill of complaint and cannot set forth as to  
28 their or either of their belief or otherwise whether,  
the title "Tarka" was or is an original title,



1 originated, composed or affixed to the original or any  
2 adaptation by the said Tarnie, or never had  
3 prior to the composition of said dialogue, or words  
4 of the songs of the said operetta been used, de-  
5 dicated or known in connection with any other  
6 dramatic composition of any kind, or that the  
7 said title has been well or at all known in  
8 connection with its use as a designation or  
9 name for the said operetta so originated or com-  
10 posed by the said Tarnie, or at all, or as a means of id-  
11 entifying his said work. —

12 Fifth:

13 And these defendants  
14 say, to their or either of their knowledge or belief  
15 they or either of them do not know and have  
16 never been informed save by said plaintiffs' Bill  
17 of complaint, and cannot set forth as to their or  
18 either of their belief or otherwise, whether, on the  
19 24<sup>th</sup> day of January 1884, or at all, or after the  
20 said dialogue or words of the songs of said oper-  
21 etta "Talia" had been thus or otherwise composed  
22 or written, or either, or at all, by said Tarnie,  
23 the said Henry Brougham Tarnie being then  
24 or at all, the sole owner or proprietor thereof, or  
25 either, sold, assigned or transferred or set over  
26 unto complainant, his executors, administrators or  
27 assigns to his or their use or benefit, or either, or  
28 at all, the said dialogue or words of the songs  
of the said operetta, or either, or the manuscript



1 thereof, or all, or any, the right, title or interest  
2 of said Tarnie, in or to the same or the produc-  
3 tion thereof on any stage in the United States,  
4 or in, or to all, or any profits benefit or advantage  
5 that should or might arise from the production  
6 of said operetta in the United States, or at all,  
7 or either. —

8 Sixth:

9 And these defendants  
10 further answering said Bill of complaint admit  
11 having produced the operetta hereinbefore  
12 mentioned at their said opera house for the period  
13 of ~~twenty-two~~ days, beginning on the 4<sup>th</sup> day of  
14 January 1886; but deny that the same was  
15 so produced without the consent or authority of  
16 complainant, or any one having the right to  
17 grant such authority, or without having paid com-  
18 pensation whatsoever for the right to produce  
19 the same under the said title "Palka", or in  
20 said production used the said dialogue or  
21 words of the songs as composed by said Tarnie  
22 and owned by complainants, or at all, or either. —

23 Seventh:

24 And these defendants  
25 deny, that neither said Tarnie nor complainant  
26 have ever assented to, or acquiesced in the public  
27 representation of the said operetta by these defend-  
28 ants, nor by anyone not specially licensed to  
represent the same, but on the contrary the said  
operetta was printed, published and dedicated to the



1 public long prior to the alleged transfer to com-  
2 plaintant as aforesaid; and these defendants say to  
3 their or either of their knowledge or belief, they  
4 or either of them do not know and have never  
5 been informed save by said plaintiffs' Bill of complaint,  
6 and cannot set forth as to their or either of their belief, or  
7 otherwise, whether, the authorship of said operetta has  
8 been frequently, or at all, asserted in the different  
9 or any newspapers or channels of communication  
10 specially or otherwise or at all devoted to the  
11 atrnical matters or news, or either or at all, or  
12 has been or is well known, or otherwise, or at all,  
13 or recognized throughout the United States; an attach-  
14 ed to said complaint marked "Exhibit A" is the af-  
15 fidant of the author, or pretended or alleged  
16 author to above or any effect. —

17 — And these defendants deny all in all  
18 manner of unlawful combination and confeder-  
19 acy wherewith they are by the said Bill charg-  
20 ed, without this, that there is any other matter,  
21 cause, or thing in the said complainants' said  
22 Bill of complaint contained, material or neces-  
23 sary for these defendants to make answer unto,  
24 and not herein and hereby well and  
25 sufficiently answered, confessed, traversed, and  
26 avoided or denied, is true to the knowledge or  
27 belief of these defendants; all of which matters  
28 and things these defendants are ready and

1 willing to aver, maintain and prove as well



1 willing to aver, maintain and prove as this  
 2 honorable court shall direct; and humbly pray  
 3 to be hence dismissed with their reasonable  
 4 costs and charges, in this behalf most wrong-  
 5 fully sustained.

6 H. H. Lowenthal.

7 Solicitor for Respondents & Defendants.

11 United States of America.  
 12 State of California.  
 13 City & County of San Francisco.

ss.

14 Joseph Kreling, John  
 15 Kreling and William Kreling being severally duly  
 16 sworn, each for himself doth depose and say; That  
 17 he is one of the defendants and Respondents herein;  
 18 that he has read the foregoing answer to com-  
 19 plainant's Bill of complaint and knows the contents  
 20 thereof; that the same is true of his own knowledge,  
 21 except as to the matters therein stated to be al-  
 22 leged on information and belief, and as to those mat-  
 23 ters he believes it to be true.

24 Sworn to before me, this  
 25 2<sup>nd</sup> day of July A.D. 1886.

26 Joseph Kreling,  
 27 John Kreling  
 28 William Kreling

29 Chas. Wheat  
 30 Notary Public

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT,  
NORTHERN DISTRICT OF CALIFORNIA.

THOMAS H. FRENCH

Complainant

VS

JOSEPH KRELING, et al.,

Defendants.

IN EQUITY.

No. 4035

FINAL DECREE

PRESENT, the HONORABLE

*Joseph M. Kenna*  
*U.S. Circuit Judge*

At a stated term of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California held at the City of San Francisco, on the 29<sup>th</sup> day of August in the year of our Lord, one thousand eight hundred and ninety-four.

The Court having on the 13th day of August, 1894, rendered its decision in favor of the complainant, calling for a decree which includes an accounting and injunction and costs; and an accounting and costs having been settled and paid by the defendants to the complainant, in the total sum of Two hundred and fifty (\$250) Dollars, in full for all demands against the defendants, their administrators, executors, successors and assigns, for the costs of this suit, and for the proceeds due the complainant for all performances of the said opera of "FALKA" given prior to August 27, 1894; and the respective parties hereto and



their solicitors having stipulated that a decree shall forthwith be *entered* in favor of the complainant and against the defendants their administrators, successors, executors and assigns, perpetually enjoining them from producing the opera "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents;

Thereupon upon consideration thereof, it is ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree as follows, to wit:

That Thomas H. French of the City, County and State of New York, the complainant herein, was at the commencement of this suit, and still is, the sole owner and proprietor of a certain opera or operetta in the English language known as "FALKA";

And it is further ordered, adjudged and decreed that the defendants, their administrators, successors, executors and assigns be and they are hereby perpetually enjoined from producing the said opera of "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents.

*Joseph M. Kenna*  
Circuit JUDGE.



United States Circuit Court. Ninth Circuit.  
District of California

-----  
Thomas H. French,  
A citizen of the State of New York, brings  
this his bill,  
-----

-vs-

Joseph Kreling and John Kreling's William  
Kreling, citizens of the State of California  
-----

Your orator complains :-

- (1) That he is a citizen of the United States and a resident of the State of New York and is the sole proprietor of a certain operetta in the English language known as "Falka".
- (2) That Henry Brougham Farnie at all the times hereinafter mentioned was and now is a resident of the city of London, England, and the sole author and composer of the dialogue and words of the songs of said operetta, which is an adaptation into the English language original with said Farnie.
- (3) That the said operetta Falka is a dramatic and musical composition and consists of parts to be spoken and of parts to be sung with suitable words and of music composed for and intended to be played by an orchestra in conjunction with said words and said vocal parts. That said music was composed by one Chassaigne.
- (4) That the dialogue and words of the songs of the said operetta Falka are now and always have been in manuscript and have never at any time been published, printed or in any way dedicated to the public or made in form of publication.



(5) Your orator further alleges that the title "Falka" was and is an original title, originated, composed and affixed to the said original adaptation by the said Farnie and never had, prior to the composition of said dialogue and words of the songs of the said operetta, been used, dedicated or known in connection with any other dramatic composition of any kind; and the said title has become well and favorably known as an exceedingly valuable property in connection with its use as a designation or name for the said operetta so originated and composed by the said Farnie, and as a means of identifying his said work.

(6) Your orator further alleges that on the 24th day of January 1884, and after the said dialogue and words of the songs of said operetta "Falka" had been thus composed and written by the said Farnie, the said Henry Brougham Farnie, being then the sole owner and proprietor thereof, sold, assigned, transferred and set over unto your orator, his executors, administrators and assigns to his and their own use and benefit, the said dialogue and words of the songs of the said operetta, and the manuscript thereof, and all the right, title and interest of said Farnie in and to the same and the production thereof on any stage in the United States, and in and to all profit, benefit and advantage that should or might arise from the production of said operetta in the United States.

(7) Your orator further alleges upon information and belief that the respondents *Joseph John William Kreling and* ~~Kreling~~ were, during the years 1885 & 1886 copartners in business in the city of San Francisco and were the proprietors, lessees or managers of a certain place of amusement situated in the city of San Francisco, California, known as the Tivoli Opera House.

Deputy Clerk.



(10) That the respondents have not rendered any account of the box office receipts at their said and the 25th day of January 1886, without the consent or authority of your orator, or any one having the right to grant such authority, and without having paid any compensation whatever for the right to produce the same, did produce the said operetta under the said title "Falka" and in said production used the said dialogue and words of the songs as composed by the said Farnie and owned by your orator.

(8) Your orator further alleges that neither the said Farnie nor your orator has even assented to or acquiesced in the public representation of the said operetta by the said respondents, nor by any one not specially licensed to represent the same; and the authorship of said operetta has been frequently asserted in the different newspapers and other channels of communication specially devoted to theatrical matters and news and has been and is well known and recognized throughout the United States. *and attached hereto is marked Exhibit "A" is the affidavit of the author to the above effect, which affidavit is made a part of this Bill.*

(9) That the said operetta has been, under authority granted by the author of the said operetta and by your orator, publicly performed throughout the United States, by reason whereof large profit has been realized by the said author and your orator; and that the said operetta is an exceedingly valuable property to your orator. That whenever the same has thus been produced, the persons authorized to produce the same have always paid to your orator ~~the sum of~~ <sup>a percentage</sup> upon the gross amount received from said productions by way of compensation and royalty, which is a fair and reasonable compensation for the right to produce the same.



the said respondents have not rendered any account or statement of the box office receipts at their said place of amusement to your orator or to any one in his behalf, and have wholly neglected to pay any royalty for such performances by them, although the gross receipts for the production of the said operetta "Falka" at their said place of amusement has, as your orator charges on information and belief, amounted to a very large sum of money; and the said respondents refuse to render any such account or make any payment to your orator.

(10) That the respondents have not rendered any account or statement of the box office receipts at their said place of amusement to your orator or to any one in his behalf, and have wholly neglected to pay any royalty for such performances by them, although the gross receipts for the production of the said operetta "Falka" at their said place of amusement has, as your orator charges on information and belief, amounted to a very large sum of money; and the said respondents refuse to render any such account or make any payment to your orator.

YOUR ORATOR THEREFORE PRAYS : that the respondents be required to answer the premises under oath and to account to and with your orator for all the gross receipts of their said place of amusement known as the Tivoli Opera House in the city of San Francisco, at which the said operetta has been performed; and that they be required to deliver to your orator copies of the box office statements showing the gross receipts at the said place of amusement at each performance of the said operetta so produced as aforesaid; and that they be required to pay over to your orator as damages caused by said unauthorized performances, a sum equal to ten per cent. upon the gross receipts, with interest thereon.

That a discovery may be had and the respondents be compelled to disclose the number of copies possessed by them of the said operetta and as to where and by what means the respondents obtained the same or any colorable imitation or simulation thereof.

That a receiver be appointed to receive and take charge of all copies of the said operetta in the possession or under the control of the said respondents for the purpose of transferring

Deputy Clerk.



...the same to your orator.  
That your orator have such other and further relief in  
the premises as may seem meet and the nature of the case may  
require.  
Joseph D. Redding  
Solicitor & of Counsel for  
Complainant  
over  
Sworn to before me  
January 30th 1880.  
Sherman C. Ostry

the same to your orator.

That your orator have such other and further relief in  
the premises as may seem meet and the nature of the case may  
require.

Joseph D. Redding  
Solicitor & of Counsel for  
Complainant

over

Sworn to before me  
January 30th 1880.

Sherman C. Ostry

Sherman C. Ostry



...the deposition of ... the ... of ... the ...  
...the ... of ... the ... of ... the ...  
...the ... of ... the ... of ... the ...

City & County of New York, ss :

Thomas H. French being duly sworn, says : he is the com-  
plainant herein; that he has read the foregoing bill of complaint  
and knows the contents thereof; that the same is true of his own  
knowledge, except as to the matters therein stated to be alleged  
on information and belief and that, as to those matters, he be-  
lieves it to be true.

Sworn to before me )  
January 30<sup>th</sup> 1886. )

*Thomas H. French*

*Spencer C. Doty*

Notary Public,

STATE OF NEW YORK,  
City and County of New York, } ss.

I, JAMES A. FLACK, Clerk of the City and County of New York, and also Clerk of the Supreme  
Court for the said City and County, the same being a Court of Record, DO HEREBY CERTIFY,  
That

*Spencer C. Doty*

before whom the Annexed deposition was taken, was, at the time of taking the same, a  
Notary Public of New York, dwelling in said City and County, duly appointed and sworn  
and authorized to administer oaths to be used in any Court in said State, and for general  
purposes; and that his signature thereto is genuine, as I verily believe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the  
said Court and County, the day of *James A. Flack* 1886.

*This 11<sup>th</sup> day of March 1886*

*Before*

*A Commissioner to administer Oaths  
in the Supreme Court of Judicature*

Deputy Clerk.



Original

J. V. E. G.

I Henry Brongham Farnie  
of No. 95 The Albany Piccadilly in the  
County of Middlesex Dramatic Author  
do solemnly and sincerely declare that

J. V. E. G.  
J. V. E. G.  
J. V. E. G.

1. That no printed libretto of my opera  
named "Tarka" has ever been published  
and was only printed for private use in the London Theatre where  
it was produced and that I never authorized its sale by  
Messrs. Kington Brothers & Co. San Francisco U.S.A.  
and I make this solemn declaration

conscientiously believing the same to  
be true and by virtue of the provisions  
of an Act made and passed in the fifth  
and sixth years of the reign of his late  
Majesty King William the Fourth intituled  
"An Act to repeal an act of the present  
Session of Parliament intituled "An  
Act for the more effectual abolition of  
Oaths and Affirmations taken and made  
in various departments of the State"  
and to substitute declarations in lieu  
thereof and for the more entire  
suppression of voluntary and extra  
judicial oaths and affidavits and to  
make other provisions for the abolition  
of unnecessary oaths"

Declared and Subscribed  
at 32 Great Street Strand  
in the County of Middlesex  
this 11<sup>th</sup> day of March 1886  
Before me

H. B. Farnie.

J. V. E. G.

A Commissioner to administer Oaths  
in the Supreme Court of Judicature

Deputy Clerk.



United States Court,  
DISTRICT OF CALIFORNIA.  
EQUITY.

Thomas H. French

Joseph Kreling  
et al.

SUBPOENA.

Filed May 12 1886  
L. S. B. SAWYER,  
Clerk.

By J. P. Mendenhall  
Deputy Clerk.

PAGE  
1

Circuit Court of the United States Ninth  
Circuit, District of California —  
— In Equity. —

Thomas H. French  
— vs. —  
Joseph Kreling,  
John Kreling<sup>and</sup>  
William Kreling.

And now come the above named de-  
fendants and respondents, and now and at all  
times hereafter saving to themselves all and all  
manner of benefit, or advantage of exception, or  
otherwise, that can or may be had or taken to  
the many errors, uncertainties and imperfections  
in said Bill contained, and answering the same  
or so much thereof as these defendants are advis-  
ed is material or necessary for them to make  
answer to, say. —

First: These defendants say, to  
their or either of their knowledge or belief, they or  
either of them do not know and have never been in-  
formed save by said plaintiffs Bill of complaint and  
cannot set forth as to their or either of their belief  
or otherwise, whether the said complainant is a cit-  
izen of the United States, or a resident of the State of  
New York. And deny that the complainant is



I hereby Certify, that I received the within writ on the 4<sup>th</sup> day of

PAGE  
2

1 the sole proprietor, or at all, of a certain Operetta  
2 or any Operetta in the English language known  
3 as "Talka".

4 Second.

5 These defendants say, to  
6 their or either of their knowledge or belief, they  
7 or either of them do not know and have never been  
8 informed, save by said plaintiffs bill of complaint,  
9 and cannot set forth as to their belief or otherwise,  
10 whether, one Henry Brougham Farnie at all, or at  
11 any time was or now is a resident of London, Eng-  
12 land, or the sole author or composer, or either, of  
13 the dialogue or words, of  
14 the songs of said operetta, or which is an adapta-  
15 tion into the English language original or  
16 otherwise with said Farnie.

17 Third.

18 And these defendants  
19 deny that the dialogue and words, or either, of  
20 the songs of said operetta "Talka" are now and  
21 always have been in manuscript, or have never  
22 at any time been published, printed or in any  
23 way dedicated to the public or made in form  
24 of publication, but on the contrary said operetta  
25 in its entirety including the dialogue, the words  
26 of the songs, and music, and every thing appertain-  
27 ing to said operetta were published in Book  
28 form in the English language by Alfred Hays  
in the city of London, England, and publicly sold  
at the places of business of said Alfred Hays at  
the city of London, England, and other publishing

PAGE  
3

1 houses, by and under the name of  
2 authors of said operetta since the year 1883 and  
3 was entered in the  
4 in said city of London, pub-  
5 lished in the name of the  
6 the songs  
7 form  
8 by and  
9 these defend-  
10 the  
11 house  
12 San Francisco, State of  
13 in their said  
14 and 2nd Comique,  
15 among others  
16 purchased a printed and published copy of an  
17 operetta known as "Talka" in its entirety, and pro-  
18 duced the same at their said opera house in the  
19 city and county of San Francisco, which said oper-  
20 etta was prior to the production thereof, duly de-  
21 dicated to the public as aforesaid.

22 Fourth.

And these defendants



14 into the English language original or  
15 otherwise with said Fornie. Third.

16 deny that the dialogue and words, or either, of  
the songs of said operetta "Tarka" are now and  
have been in manuscript, or have never  
been published, printed or in any  
manner dedicated to the public or made in any  
manner known to the public, including the dialogue, the words  
and every thing appertaining  
were published in Book  
in the English language by Alfred Hays  
London, England, and publicly sold  
of said Alfred Hays at  
England, and other publishing

PAGE  
3

1 houses, by and with the consent of the composers and  
2 authors of said operetta, since the year 1883 and  
3 said operetta as published was entered in the  
4 State Hall, a register in said city of London, sub-  
5 sequent to the publication of the same. That the  
6 vocal score and songs, and the words of the songs  
7 were also published and sold in book form  
8 throughout England and the United States by and  
9 with the consent of the author, and these defend-  
10 ants who have for several years last past been the  
11 proprietors of a theatre known as the "Pavoli Opera House"  
12 in the city and county of San Francisco, State of  
13 California, and as such have produced in their said  
14 Theatre, a large number of operas, Grand Op. Comique,  
15 and these defendants in open market among others  
16 purchased a printed and published copy of an  
17 operetta known as "Tarka" in its entirety, and pro-  
18 duced the same at their said opera house in the  
19 city and county of San Francisco, which said oper-  
20 etta was prior to the production thereof, duly de-  
21 dicated to the public as aforesaid. Fourth.

22 And these defendants  
23 say to their or either of their knowledge or  
24 belief, they or either of them do not know and  
25 have never been informed save by said plaintiffs  
26 Bill of complaint and cannot set forth as to  
27 their or either of their belief or otherwise whether  
28 the title "Tarka" was or is an original title,



United States Marshal's Office,  
DISTRICT OF CALIFORNIA.

I hereby Certify, that I received the within writ on the 4<sup>th</sup> day of

PAGE  
#

1 originated, composed or affixed to the original or any.  
2 adaptation by the said Tarnie, or never had  
3 prior to the composition of said dialogue, or words  
4 of the songs of the said operetta been used, de-  
5 dicated or known in connection with any other  
6 dramatic composition of any kind, or that the  
7 said title has been well or at all known in  
8 connection with its use as a designation or  
9 name for the said operetta so originated or com-  
10 posed by the said Tarnie, or at all, or as a means of id-  
11 entifying his said work. —

12 Truth: And these defendants  
13 say, to their or either of their knowledge or belief  
14 they or either of them do not know and have  
15 never been informed save by said plaintiffs Bill  
16 of complaint, and cannot set forth as to their or  
17 either of their belief or otherwise, whether, on the  
18 24<sup>th</sup> day of January 1884, or at all, or after the  
19 said dialogue or words of the songs of said oper-  
20 etta "Tarka" had been thus or otherwise composed  
21 or written, or either, or at all, by said Tarnie,  
22 the said Henry Brougham Tarnie being then  
23 or at all, the sole owner or proprietor thereof, or  
24 either, sold, assigned or transferred or set over  
25 unto complainant, his executors, administrators or  
26 assigns to his or their use or benefit, or either, or  
27 at all, the said dialogue or words of the songs  
28 of the said operetta, or either, or the manuscript

PAGE  
5

1 thereof, or any, or to the same or the produc-  
2 of said Tarnie, or to the same or the produc-  
3 tion, or any stage in the United States,  
4 its benefit or advantage  
5 from the production  
6 United States, or at all,

And these defendants  
said Bill of complaint admit  
the operetta hereinbefore  
at their said opera house for the period  
days, beginning on the 4<sup>th</sup> day of  
1886; but deny that the same was  
produced without the consent or authority of  
complainant, or any one having the right to  
grant such authority, or without having paid com-  
pensation whatsoever for the right to produce  
the same under the said title "Tarka", or in  
said production used the said dialogue or



14 they or either of them do not know and have  
15 never been informed save by said plaintiffs Bill  
16 of complaint, and cannot set forth as to their or  
their belief or otherwise, whether, on the  
may 1884, or at all, or after the  
words of the songs or otherwise composed  
then, or at all, by said Tarnie  
at all, the sole owner or proprietor thereof, or  
then sold, assigned or transferred or set over  
his executors, administrators or  
their use or benefit, or either, or  
at all, the said dialogue or words of the songs  
28 of the said operetta, or either, or the manuscript

PAGE  
5

1 thereof, or all, or any, the right, title or interest  
2 of said Tarnie, in or to the same or the produc-  
3 tion thereof on any stage in the United States,  
4 or in, or to all, or any profits benefit or advantage  
5 that should or might arise from the production  
6 of said operetta in the United States, or at all,  
7 or either. —

8 Sixth: And these defendants  
9 further answering said Bill of complaint admit  
10 having produced the operetta hereinbefore  
11 mentioned at their said opera house for the period  
12 of ~~twenty-two~~ days, beginning on the 4<sup>th</sup> day of  
13 January 1886; but deny that the same was  
14 so produced without the consent or authority of  
15 complainant, or any one having the right to  
16 grant such authority, or without having paid com-  
17 pensation whatsoever for the right to produce  
18 the same under the said title "Palka", or in  
19 said production used the said dialogue or  
20 words of the songs as composed by said Tarnie  
21 and owned by complainants, or at all, or either.

22 Seventh: And these defendants  
23 deny, that neither said Tarnie nor complainant  
24 have ever assented to, or acquiesced in the public  
25 representation of the said operetta by these defend-  
26 ants, nor by anyone not specially licensed to  
27 represent the same, but on the contrary the said  
28 operetta was printed, published and dedicated to the



United States Marshal's Office,  
DISTRICT OF CALIFORNIA.

I hereby Certify, that I received the within writ on the 7<sup>th</sup> day of

PAGE

1 public long prior to the alleged transfer to com-  
2 plainant as aforesaid; and these defendants say to  
3 their or either of their knowledge or belief, they  
4 or either of them do not know and have never  
5 been informed save by said plaintiff's Bill of complaint,  
6 and cannot set forth as to their or either of their belief, or  
7 otherwise, whether, the authorship of said operetta has  
8 been frequently, or at all, asserted in the different,  
9 or any newspapers or channels of communication  
10 specially or otherwise or at all devoted to the  
11 actual matters or news, or either or at all, or  
12 has been or is well known, or otherwise, or at all,  
13 or recognized throughout the United States; as attach-  
14 ed to said complaint marked "Exhibit A" is the af-  
15 fidant of the author, or pretended or alleged  
16 author to above or any effect.

17 And these defendants deny all in all  
18 manner of unlawful combination and confeder-  
19 acy wherewith they are by the said Bill charg-  
20 ed, without this, that there is any other matter,  
21 cause, or thing in the said complainant's said  
22 Bill of complaint contained, material or neces-  
23 sary for these defendants to make answer unto,  
24 and not herein and hereby well and  
25 sufficiently answered, confessed, traversed, and  
26 avoided or denied, is true to the knowledge or  
27 belief of these defendants; all of which matters  
28 and things these defendants are ready and

PAGE

1 willing to aver, maintain and prove as a  
2 honorable court shall direct; and humbly pray  
3 to be hence discharged with their reasonable  
4 costs and in this behalf most wrong-  
5 fully and unjustly.  
6 J. H. Lowenthal.  
7 For Respondents & Defendants.

County of America.  
County of California.  
County of San Francisco.

ss. Joseph Kreling, John  
William Kreling being severally duly  
sworn in himself doth depose and say; that  
one of the defendants and Respondents herein;  
that he has read the foregoing answer to com-  
plainant's Bill of complaint and knows the contents  
of the same to be true to his own knowledge.



15 said complaint marked "Exhibit A" is the af-  
16 fidant of the author, or pretended or alleged  
17 author to above or any effect.  
18 And these defendants deny all and all  
19 manner of unlawful combination and confeder-  
20 acy wherewith they are by the said Bill charg-  
21 ed, without this, that there is any other matter,  
22 cause, or thing in the said complainants' said  
23 Bill of complaint contained, material or neces-  
24 sary for these defendants to make answer unto,  
25 and not herein and hereby well and  
26 sufficiently answered, confessed, traversed, and  
27 avoided or denied, is true to the knowledge or  
28 belief of these defendants; all of which matters  
and things these defendants are ready and

PAGE  
7

1 willing to aver, maintain and prove as this  
2 honorable court shall direct; and humbly pray  
3 to be hence dismissed with their reasonable  
4 Costs and charges, in this behalf most wrong-  
5 fully sustained.

H. K. Lowenthal.  
Solicitor for Respondents & Defendants.

11 United States of America.  
12 State of California. ss.  
13 City & County of San Francisco.

14 \_\_\_\_\_ Joseph Kreling, John  
15 Kreling and William Kreling being severally duly  
16 sworn, each for himself doth depose and say; that  
17 he is one of the defendants and Respondents herein;  
18 that he has read the foregoing answer to com-  
19 plainants Bill of complaint and knows the contents  
20 thereof; that the same is true of his own knowledge,  
21 except as to the matters therein stated to be al-  
22 leged on information and belief, and as to those mat-  
23 ters he believes it to be true.

24 Sworn to before me, this \_\_\_\_\_ Joseph Kreling,  
25 2<sup>nd</sup> day of July AD. 1886. John Kreling  
26 William Kreling

27 \_\_\_\_\_  
28 Charles Wheat  
Notary Public



IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT,  
NORTHERN DISTRICT OF CALIFORNIA.

THOMAS H. FRENCH

Complainant

VS

JOSEPH KRELING, et al.,

Defendants.

IN EQUITY.

No. 4035

FINAL DECREE

PRESENT, the HONORABLE

*Joseph McKenna*  
*U.S. Circuit Judge*

At a stated term of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California held at the City of San Francisco, on the 29<sup>th</sup> day of August in the year of our Lord, one thousand eight hundred and ninety-four.

The Court having on the 13th day of August, 1894, rendered its decision in favor of the complainant, calling for a decree which includes an accounting and injunction and costs; and an accounting and costs having been settled and paid by the defendants to the complainant, in the total sum of Two hundred and fifty (\$250) Dollars, in full for all demands against the defendants, their administrators, executors, successors and assigns, for the costs of this suit, and for the proceeds due the complainant for all performances of the said opera of "FALKA" given prior to August 27, 1894; and the respective parties hereto and



THOMAS H. FRENCH

DOMINION OF COPYRIGHT

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT

their solicitors having stipulated that a decree shall forthwith be *Entered* in favor of the complainant and against the defendants their administrators, successors, executors and assigns, perpetually enjoining them from producing the opera "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents;

Thereupon upon consideration thereof, it is ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree as follows, to wit:

That Thomas H. French of the City, County and State of New York, the complainant herein, was at the commencement of this suit, and still is, the sole owner and proprietor of a certain opera or operetta in the English language known as "FALKA";

And it is further ordered, adjudged and decreed that the defendants, their administrators, successors, executors and assigns be and they are hereby perpetually enjoined from producing the said opera of "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents.

*Joseph M. Hanna*  
Circuit JUDGE.







This is a bill in equity to compel respondents to account for the receipts of the Tivoli Opera House at which the operetta of "Falka" was performed, and for other and further equitable relief.

From the testimony taken on behalf of complainant it appears that he is the owner of said operetta; that one Henry Farnel, of London, England, was the author and composer of the dialogue and words of the songs of said operetta, and that it was by him adapted into the English from the French original entitled "Le Droit D'Alpessis;" that this English adaptation is in many respects an entirely original work; that from the middle of the second act to the end of the third act the plot and situations are entirely original; that four of the characters and all the situations and dialogue appertaining to the characters were the creation of Farnel; that the entire English dialogue of "Falka" is original; that the title "Falka" is an original title affixed by Farnel; that prior to his composition of the dialogue words and songs the said operetta had never been used in connection with any other composition or operetta; that the music was written by Francis Chassaigne; that the operetta consists of a libretto in three acts and a musical score; that the dialogue, words, songs and spoken parts thereof have never been published; that the musical score has been published with the words of the songs so set to music; that the dialogue, libretto and stage business, etc., have never been published; that if any copy of said unpublished libretto ever came into the possession of respondents, such copy was obtained by illegal means; that the authorship of said operetta has been asserted in newspapers and has been known and recognized throughout the United States; that royalties have been



received from the licensed performances thereof, and that the property of said opera<sup>is</sup> valuable, &c., &c. and by this must in  
Upon the part of the respondents it was attempted to be shown by the testimony of Alfred Hays, of London, England, a musical publisher, that the comic opera "Falke" had been published in book form. The testimony of this witness, which is quite lengthy, fails to show any such publication. He testified that: "The words were printed for the use of the artists to learn their respective parts. The book was printed in 1883, and was never in circulation. Such books were kept by myself at my private residence, under lock and key, and copies were handed to the stage manager by myself. As he required them he would hand them to the artists to be used by them, only for the purpose of learning their respective parts. \* \* \* They were never published and circulated. The book was only printed for the convenience of the artists to enable them to learn their parts \* \* \* I say that said book nor any counterpart thereof has never been published. It was merely printed for the private use of the artists as is the custom in this country and is not now public property."

This book upon its title page contains the words ( Right of representation and reproduction reserved ) and on the inside page is written in ink the names of the original cast in America, and at the top of the next page written in ink - evidently in the same handwriting - "Property of F. J. McCarthy, presented to him by E. J. Steyne, Comedy Theatre, London, E."

In the original cast of characters appear the name of F. J. McCarthy, as "Tekeli".

The law protecting the rights of author's in their compositions, literary and musical, where they have not been dedica-



ted to the public, or published with the authors consent, is well established. The principles announced by this court in Goldmark v. Kreling, 13 Saw., 311; Henderson v. Tompkins, 60 Fed., 784, and in Drone on Copy Rights, sections 97, 121, 323, 526 are conclusive in favor of complainant's right to a decree, with costs.

Let a decree be so entered.



IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT  
NORTHERN DISTRICT OF CALIFORNIA.

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T. H. F R E N C H

Plaintiff

VS

No. 4,035

JOSEPH KRELING, et al

IN EQUITY.

Defendants

-----

S T I P U L A T I O N

FOR DECREE AND SETTLEMENT OF CASE.

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WHEREAS---In the above entitled action, the Court did on the *Thirteenth* (13<sup>th</sup>) day of August, 1894, render its decision in favor of the plaintiff, calling for a decree which includes an accounting and injunction and costs, and

WHEREAS, it is the desire of the parties to this action and their solicitors to settle this case and end this litigation---

NOW THEREFORE--- it is stipulated by and between the respective parties hereto and their solicitors, that a decree shall forthwith be entered in favor of the plaintiff and against the defendants their, administrators, successors, executors and assigns, perpetually enjoining them from producing the opera of "FALKA" or any version thereof belonging to the plaintiff, at any time and place and forever, without the written consent of



the plaintiff or his agents and it is furthermore stipulated that in said decree there shall be recited an accounting and costs as having been settled and paid by the defendants to the plaintiff in the total sum of Two hundred and fifty (\$250) Dollars in full for all demands against the defendants their administrators, executors, successors and assigns for the costs of this suit and for the proceeds due the plaintiff for all performances of the said opera of "FALKA", given prior to the date of the signing hereof. It is furthermore stipulated that this stipulation shall be filed in this cause and in said Court and a decree in favor of the plaintiff and in conformity with the terms of the stipulation may be entered.

*Joseph D. Ralphy*  
Solicitor for Plaintiff

*H. H. Kowenhaus*  
Solicitor for Defendants

Dated, August 27th, 1894.



In the Circuit Court of the United States for the Ninth Judicial Circuit,  
in and for the District of California.

<u>T. H. French,</u>	}	<u>In Equity. No. 2035</u>
<small>Complainant,</small>		
<u>vs.</u>		
<u>Joseph Krilling et al.,</u>		
<small>Respondent.</small>		

Be it Remembered, that,  
on the fifth day of January, A. D. 1888, and on  
the several days thereafter to which the examination was regularly  
adjourned, as hereinafter set forth, at my Office, Room 57, in the United  
States Appraisers' Building, on the north-east corner of Washington and  
Sansome Streets, in the City and County of San Francisco, State of  
California, before me,

S. C. Doughton, Examiner in Chancery,

of the Circuit Court of the United States for the Ninth Circuit and District  
of California, personally appeared the several witnesses whose names are  
hereinafter set forth, who were produced and examined on behalf of the  
respective parties to the above-entitled cause.

J. D. Redding, Esq.,  
appeared as counsel on behalf of Complainant, and  
H. H. Lowenthal, Esq.,  
as counsel on behalf of Respondent.

Following is a record of the proceedings.



Saturday, January 5th, 1888.

Present: Mr. REDDING, of counsel for complainant;  
Mr. Lowenthal, of counsel for respondent.

It is admitted by both complainant and respondent, as facts, that Joseph Krelling, one of the respondents herein, died after the commencement of this suit, and after service of process therein upon him; and that his wife was duly appointed and served as executrix, and has been discharged from her duties as such executrix.

EXAMINATION-IN-CHIEF

of

CHARLES M. PYKE

On behalf of respondent.

Q.1 (By Mr. LOWENTHAL) State your name, age, place of residence and occupation.

A. My name is Charles M. Pyke, my age forty-one years, I reside in San Francisco at present, and am by occupation a theatrical ~~xxxxxxx~~ stage manager.

Q.2 Mr. Pyke, you are a theatrical manager, and have been so for how many years?

A. About five or six years. Yes, eight years, possibly.

Q.3 And are you a professional gentleman also, so far as being an actor?

A. Yes, sir.

Q.4 And have been so for how long? A. Ten years.

Q.5 Played leading roles in operas, have you not?

A. Yes, sir.



A. Yes, sir.

Q.7 Have you ever seen a production of "Falka"?

A. Yes, sir; I have.

Q.8 Have you ever taken any part in it, yourself, at any time?

A. No, sir; I have not.

Q.9 Have you ever seen this book attached to the depositions taken in this case in London, marked "Respondent's Exhibit 1", before to day, and if so, state what it is.

A. Yes, sir; I have seen it before to day. It is the libretto of the opera of "Falka", the acting edition.

Q.10 In its entirety?

A. Yes, sir.

Q.11 Who is the composer of that opera as appears on the title page?

A. F. Chassaigne.

Q.12 The book that I have shown you, "Exhibit 1", is a printed copy of the libretto of "Falka", is it? A. Yes, sir.

Q.13 You say you have seen the opera produced?

A. Yes, sir; I saw it produced.

Q.14 Where?

A. In New York.

Q.15 You know the characters? A. Yes, sir; pretty well.

Q.16 Do you know the gentlemen who took part in the production of any of the characters?

A. Yes, sir; I know most all of them. In fact I think I know them all. Of course I was at that time in New York.



CHARLES M. PYKE.

Q.1 (By Mr. REDDING.) At what theatres in New York did you see this opera performed?

A. At the Casino.

Q.2 And also at the German Theatre?

A. No, sir; I didn't see it at the German Theatre.

Q.3 What year was it that you saw it at the Casino?

A. It must have been about six years ago---between five and six years ago.

Q.4 Let me refresh your memory by stating the fact that the opera was written by Chassaigne and Farnie somewhere in 1883, and first produced in this country in 1883---that would be about six years ago.

A. Yes, sir; that is what I thought.

Q.5 That is, the first part of 1884, or the latter part of 1883?

A. Yes, sir.

Q.6 Who were the proprietors of that theatre, the Casino?

A. McCall had it then.

Q.7 Do you know who McCall deals with in getting these operas from Europe?

(Question objected to by respondent, as entirely incompetent and immaterial, and not proper cross examination.)

A. Well, he deals with different people.

Q.8 Can you give me any opinion as to who Mr. McCall got this opera of "Falka" from in Europe?

(Question objected to by respondent, as incompetent, immaterial and irrelevant, and not proper cross examination.)



tion.)

Q9 State what you know, or the best of your recollection.

A. I know that Mr. McCall, who produced this opera originally, didn't only get operas from one source, but many; and I don't know the particular source through which he got this opera of "Falka". It is nothing that I could swear to.

Q.10 Well, to the best of your information, have you any idea or recollection? That is to say, what I desire to ascertain is, from your knowledge of these things in general, do you know the method by which Mr. McCall gets these operas from abroad? Is it not a fact that he enters into contracts with foreign authors, composers and agents, for these operas, and pays a royalty for them?

(Question objected to by respondent, as being improper, immaterial and irrelevant, and not proper cross examination.)

A. Well, I know that Mr. McCall pays a royalty, and sometimes buys an opera right out; and I know that there are plenty of operas that he has produced that he has neither paid a royalty for, or bought.

Q.11 You have paid a royalty, yourself, for operas?

(The same objections by respondent.)

A. Yes, sir.

Q.12 Do you know what business Mr. T. Henry French is in? A. He is in the publishing business in New York.

Q.13 Does he not also have an agency for operas written abroad, and upon which he charges a royalty for the production



here in America?

A. That I am hardly prepared to answer, any more than that I have heard his name mentioned in connection with this opera of "Falka".

Q.14 Have you ever paid him any royalty for operas at all?

A. No, sir; never.

Q.15 You never saw this opera produced anywhere except at the Casino in New York, did you?

A. No, sir.

Q.16 You never saw it produced by what they call "snap" companies on the road?

A. No, sir; I never have.

Q.17 Is the opera of "Falka" a success?

A. Yes, sir; it was at that time.

Q.18 Was that the opera that Ricci was in?

A. Yes, sir.

Q.19 And also that tall comedian---I don't know his name?

A. Hopper, do you mean? He wasn't in it.

(Question objected to by respondent, as entirely irrelevant.)

Mr. REDDING: I desire to state this: that the evidence shows, and the exhibits shown to the witness show, that this opera was produced at the Casino under a license from the complainant herein, and that those people took part in that production, and that this was the performance that this witness saw.

Q.20 (By Mr. LOWENTHAL.) I believe you stated here that Mr. Farnie wrote the opera of "Falka". He is not the composer of this opera, is he?

A. Farnie is the writer, and Chassaigne is the composer.



(It is stipulated and agreed, by and between counsel for the respective parties herein, that the reading of the above deposition to the witness, and the signing of the same by him, and all of the depositions of the witnesses hereinafter to be taken, are waived.)

EXAMINATION-IN-CHIEF

WILLIAM KRELLING

On behalf of respondent.

Q.1 (By Mr. LOWENTHAL.) State your name, age, place of residence and occupation.

A. My name is William Krelling, my age thirty-eight years, I reside in San Francisco, and I am by occupation the proprietor and manager of the Tivoli Opera House in this City.

Q.2 You are one of the respondents in this suit?

A. Yes, sir.

Q.3 Do you recollect, Mr. Krelling, of the production of the opera "Falka" at your theatre, at the Tivoli Opera House?

A. I do.

Q.4 Do you recollect who wrote the orchestration for the opera?

A. Yes, sir.

Q.5 Who did?

A. George Kopnitz.

(It is agreed by both complainant and respondent, that the orchestration of the opera "Falka", as produced at the Tivoli Theatre, was made by George Kopnitz from the piano score of the composer.)



Q.6 Have you seen the piano-forte score of the opera "Falka"?

Mr. REDDING: I object to the question, as being improper, irrelevant, and not the best method of showing what the witness has seen; and further, that if any piano-forte score of the opera "Falka" has been published, and used by respondents, the same should be produced, instead of asking the recollection of the witness as to what he may have seen.

(It is stipulated and agreed by both complainant and respondent, that the above objection may be considered as having been interposed to any questions relating to the same subject matter.)

A. I have.

Q.7 By whom was that piano-forte score purchased for the Tivoli Theatre? Did you have it in your possession at the Tivoli Theatre?

A. Yes, sir; we have had it there a long time.

Q.8 Where did you get it?

A. We bought it in the music store.

Q.9 Was it in a printed form? A. Yes, sir.

Q.10 The music, and words of the songs? A. Yes, sir.

Q.11 When the Tivoli Opera House, or its manager, purchased the piano-forte score containing the music and the words of the songs of that opera "Falka", what was the mode that you followed with relation to arranging that piano-forte score that you did follow, in this case, for the purpose of



the orchestration and the production of the opera "Falka" at the Tivoli Opera House?

A. We gave it to Mr. George Koppitz to arrange for us.

Q.12 The piano-forte score contains simply the music for the piano, doesn't it, and the words of the songs of the opera?

A. Yes, sir.

Q.13 Did the piano-forte score that was purchased for the production of the opera "Falka", as you have testified to, contain the entire music of "Falka", and the words of the songs?

A. Certainly.

Q.14 And you say that that piano-forte score as purchased by you for that purpose was delivered to whom to arrange it for the orchestra?

A. Mr. George Koppitz.

Q.15 Do you recollect seeing this book which is attached to the depositions taken herein in London, and which is marked "Respondent's Exhibit 1", in your establishment?

A. Yes, sir.

Q.16 Prior to the time of the production of the opera "Falka"?

A. Yes, sir.

Q.17 Whose property was that book at the time?

A. It was ours.

Q.18 How did you become possessed of that book, if you can recollect?

A. We purchased it from the music dealers.

Q.19 And that book contains the libretto of the opera "Falka", doesn't it?

A. Yes, sir; this is the libretto.



CROSS-EXAMINATION

of

WILLIAM KRELLING.

Q.1 (By Mr. REDDING.) You are still connected with the Tivoli Opera House, are you? A. Yes, sir.

Q.2 You have succeeded to the business that was under the control of Joseph Krelling, John Krelling and William Krelling at the time this suit was brought, have you?

A. Yes, sir.

Q.3 And you are carrying on the same business in the same place? A. Yes, sir.

Q.4 Do you know how long the opera "Falka" was produced at your theatre? A. About three years ago.

Q.5 And for how long a period?

A. Four weeks, I believe.

Q.6 Will you produce upon the accounting in this case, should there be an accounting, your books, and show when you played this opera? A. Yes, sir.

Q.7 And show a statement of how many days that opera was performed? A. Yes, sir.

Q.8 Did you ever have any correspondence with Mr. Farnie or Mr. Chassaigne, the writer and composer of this opera "Falka", before you bought these various books upon which you produced this opera?

Mr. LOWENTHAL: I object to the question, on the ground that it assumes that Mr. Farnie and Mr. Chassaigne are the writer and composer of this opera "Falka"; and



further, that it is not proper cross examination.

A. I don't think we had.

Q.9 Have you ever paid any royalty to Chassaigne, or to Farnie?

(The same objections by respondent.)

A. No, sir.

Q.10 Do you know whether the books or publications, or anything that you have bought for the purpose of producing this opera of "Falka", were published with the consent of Chassaigne or Farnie, or their representatives?

A. I don't know anything about that.

Q.11 Did you ever pay any royalty to anybody for the production of this opera of "Falka"?

(The same objections by respondent.)

A. No, sir.

Q.12

(It is admitted by both complainant and respondent herein, as a fact, that the libretto attached to the depositions taken herein in London, marked "Respondent's Exhibit 1", is the original libretto from which the opera of "Falka" was produced by the respondents.)

Q.12 Where did you get this book from, that is attached to the depositions taken herein in London, and marked "Respondent's Exhibit 1"?

A. This book was bought in New York.

Q.13 By whom, for you?

A. Oh, it was sent for by my brother Joseph, to the publisher.



Q.14 You say this book was printed in New York?

A. No, sir; it was bought there.

Q.15 Do you testify that this book was bought at Ditson's in New York?

A. I think it was Ditson's, but I am not positive which house it was bought from; but I knew it came from New York.

Q.16 To whom did you write for this book?

A. We have standing orders in all the music stores there.

Q.17 Did you read this book before you purchased it?

A. Yes, sir.

Q.18 Did you read the title page?

A. Yes, sir.

Q.19 Did you read this sentence: "Right of representation and reproduction reserved"?

A. Yes, sir.

Q.20 Did you also read it upon the second page, "Right of representation and reproduction reserved"?

A. Yes, sir.

Q.21 And you were fully aware of that sentence appearing in two places in this book, when you bought it?

A. Yes, sir; certainly.

Q.22 You testify, do you, that you did not get an orchestration from anybody, but that you made an orchestration from the piano-forte score?

A. Yes, sir; we made it.

Q.23 You didn't pay any royalty for the orchestration?

A. No, sir. We paid him a stipulated sum for orchestrating the piano-forte score.

Q.24 In the same way that you made your own orchestration for the opera "Nanon"?

A. Yes, sir.



Q.25 You made your own orchestration for "Nanon"?

A. Yes, sir.

Q.26 You don't remember from whom you got this libretto of the opera of "Palka", from New York?

A. I don't know the name of the firm. I couldn't tell you. There is about a dozen of them there that we correspond with.

Q.27 Now, on the fourth page of this libretto, Mr. Krelling, the book that has been referred to here, marked "Respondent's Exhibit 1", and attached to the depositions taken herein in London, occurs these words written in: "The property of F. J. McCarty. Presented to him by E. T. Steyno. Comedy Theatre, London, England". Do you know whose hand writing that is?

A. No, sir.

Q.28 Do you know whether that was written in before you got it, or afterwards?

A. No, sir; I couldn't tell.

Q.29 (By Mr. LOWENTHAL) Your brother Joseph Krelling died about how long ago?

A. A year and a half ago.

Q.30 At that time the firm of Krelling Brothers was dissolved, wasn't it?

A. Yes, sir.

Q.31 That is, the firm composed of John Krelling, William Krelling and Joseph Krelling was then dissolved?

A. Yes, sir.

Q.32 Now there is a new firm of proprietors, or company.



residence San Francisco, and Monday, January 28th, 1889.

Present: Mr. LOWENTHAL, of counsel for respondent;

(At the request, by telephone, of Mr. Redding, of counsel for complainant, the examination is further continued, subject to notice and agreement.)

For the last nine years.

Wednesday, February 20th, 1889.

Present: Mr. ADAMS, appearing for Mr. REDDING, of counsel for complainant;

Mr. LOWENTHAL, of counsel for respondent.

Mr. LOMLER, a witness.

(Examination continued, in conformity with agreement of counsel, until Saturday, February 23rd, 1889, at half past ten o'clock A. M.)

Saturday, February 23rd, 1889.

Present: Mr. REDDING, of counsel for complainant;

Mr. LOWENTHAL, of counsel for respondent.

#### EXAMINATION-IN-CHIEF

of

ERNEST LOMLER.

On behalf of respondent.

Q-1 (By Mr. LOWENTHAL.) State your name, age, place of residence, and occupation?

A- My name is Ernest Lomler, my age fifty-one years, I



reside in San Francisco, and I am by occupation the manager of the Matthias Gray Company.

Q.2 (BY Mr. REDDING.) That is a corporation now?

A. That is a corporation now.

Q.3 By Mr. LOWENTHAL.) How long have you been connected with that Matthias Gray Company?

A. For the last nine years.

Q.4 What position do you occupy there? A. Manager.

Q.5 As such manager of that firm or corporation, did you become acquainted with the Krelling Brothers, proprietors of the Tivoli Opera House?

A. I did; yes, sir.

Q.6 Did they have any dealings with the firm that you represent as its manager, with relation to the purchase of scores and librettos?

A. Yes, sir.

Q.7 Do you know of an operetta known as "Falka"?

A. I do.

Q.8 Have you on hand now in your store any orchestration of the opera "Falka", if you know?

A. Well, no orchestration of it; we have the vocal scores.

Q.9 Do you recollect selling to the Krelling Brothers the vocal scores of the opera "Falka"? A. Yes, sir.

Q.10 Is the vocal score on sale in your store?

A. Yes, sir.

Q.11 So that any person may purchase the same?

A. Any one.

Q.12 And was it so in the years 1885 and 1886; that is, two or three years ago?



A. Yes, sir; I think it was. I could not tell you positively---1886, certainly; but I don't know about the dates. That, of course, I forget. I can tell by referring to the books. I know it published before they played it at the Tivoli.

Q.13 You know that as a fact? A. Yes, sir.

Q.14 In book form? A. Yes, in book form; because they studied it from those books.

Q.15 Can you recollect how many copies of the vocal score were purchased at that time by the Krelling Brothers?

A. I suppose about twenty; that is what they generally buy.

Q.16 They are purchased invariably, and were purchased at that time, as I understand, with a view of permitting the members of the company to study for the production of the opera?

(Question objected to by complainant, as leading, and withdrawn.)

Q.17 At the time of the purchase of the vocal score, as you have testified, you say that about twenty were purchased by the Krelling Brothers?

A. Yes, sir; I think that was about the number.

Q.18 Do you know the purpose for which they were purchased? A. For the purpose of representation.

Q.19 And what use were they put to by the company?

(Question objected to by complainant, as leading, and withdrawn.)

Q.20 What use were they put to by the company?

A. To study their parts.

Q.21 What does the vocal score contain?



"Respondent's Exhibit 2".)

Q.27 Is the vocal score and music of that opera printed and published and sold in the open market, and has it been so printed, published, and sold prior to the time of the production of this play at the Tivoli?

A. Yes, sir.

Q.28 And is that vocal score or music of the opera "Falka", together with the words of the songs, indiscriminately sold in the market throughout the United States, as far as you know?

A. As far as I know; yes, sir.

Q.29 Have you indiscriminately sold it throughout this city?

A. Yes, sir.

#### CROSS-EXAMINATION

of

ERNEST LOMLER.

Q.1 (BY Mr. REDDING.) You have what is called the piano-forte copies, or vocal scores, of a great many operas for sale, have you not?

A. Yes, sir.

Q.2 You have the vocal score of the opera "Nanon" for sale, have you not?

A. Yes, sir.

Q.3 And I suppose most all of the German operas and Viennese operas that we are familiar with, by Millocker and Strauss?

A. Yes, sir.

Q.4 What did I understand you to say that the vocal score contains? You spoke of the piano-forte score and vocal score as the same thing. It contains the piano-forte score of the music and songs?

A. Yes, sir.



Q.5 It doesn't contain any libretto? A. No, sir.

Q.6 You have said that the book "Respondent's Exhibit 2" which you have spoken of contained a great deal of the dialogue, and the song-words?

A. Yes, sir.

Q.7 Will you point out some of the dialogue contained in this book "Exhibit 2"? Show me one word of spoken dialogue unaccompanied with the music, and not in the body of a musical number, in that book "Exhibit 2".

A. Well, here, for instance, on page twenty-five, is portions. That is in Act II; "Good heavens; is this all true? Yes; come brother-in-law, come. No, no; I am your nephew, save me."

Q.8 That occurs, doesn't it, on page twenty-five, near the close of Act II?

A. Yes, sir.

(At the request of counsel for complainant, the page above referred to is here inserted:

"For obloquy and scorn I ran,

To save my love ('twas only human;)

But when I feign'd to be a man,

I never was the less a woman.

Fol. (stiffly.) That will do.

Fal. } (falling on knees) Pity, I pray!

Ar. }

Fol. Just seize the youthful scamp.

And make him tramp.

Tan. (rubbing hands) Oh joy! oh rapture!

Fal. }

Bel. } (surprised) Oh joy! oh rapture!

Ed. }



Ed. My brother, 'tis he!

At last my husband see. (lays hold of Tancred.

Tan. Me? You? No, no!

Ed. Ah, those sweet accents!

All doubt at length is past!

Fol. (spoken) Good heavens! is this all true?

Bel. (spoken) Yes! Come brother-in-law, come!

Tan. (spoken) No, no! I am your nephew, save me.

Fol. (to Fal.) Then who are you?

Fal. Your niece!

Fol. Oh! I am going mad!

Ensemble and Chorus.

Bel. To the greenwood, to the greenwood.

Ed.

Come, oh come with me!

Let us linger, let us linger,

Under the forest tree.

Tan. Tra la la, tra la la!

Cho. To the greenwood, &c.

Fol. (spoken) END OF ACT II.

Q.9 It is between those two sets of song-words that you say the dialogue occurs? A. Yes, sir.

Q.10 Can you find in the book "Exhibit 2" any other portion of dialogue? A. Yes, sir; on page 15.

Q.11 What occurs on page 15?

A. "A letter for me? Ah! it is from the convent! I recognize the Lady Superior's hand".

(At the request of counsel for complainant, the page 15 above referred to is here inserted:



I am my noble uncle's heir find her out.

Henceforth to be his pride and joy,

For a girl he don't much care,

Oh no, a girl's not worth a boy.

He is his noble uncle's heir, &c.

II

Fal. Of my dear uncle's daring

In fields as yet unfought;

His fire, his warlike bearing,

Of these I have been taught.

And these facts think I much on,

Heritage past all price;

Thus on my proud escutcheon

Bear I for sole device.

I am my noble uncle's heir, &c.

Enter Peasant with letter.

Jan. My lord, a letter!

(aside) Petition from some debtor.

Fal. (spoken) A letter for me? Ah! it is from the convent! I recognize the Lady Superior's hand.

Fal. (spoken) From the convent. I don't like that at all.

Fal. (spoken) Good heavens! what do I read!--

Fal. (to Falkal) Your sister's eloped!

QUINTETTE.

Fal. Eloped? My sister has eloped?

Fal. Not a doubt--not a doubt!

Now spread yourselves and find her out.



Cho. Let's spread ourselves and find her out.

Pel. That is useless quite.

Cho. Who's the ~~whaik~~ holy man?

Jan. Pelican, Pelivan!

Pel. All will own I am right.

(showing Falka's robe) Now what is this I show? "

Q.12 Now, in each of those instances can you testify whether or not music is being played by the orchestra at the same time? A. That I couldn't tell you.

Q.13 Do you know whether the vocal score or piano-forte score contains what we know as sustained chords, or monotones, during this dialogue of which you speak?

A. No, sir; I couldn't tell you.

Q.14 Can you produce before the Examiner a copy of the vocal score similar to the one which you sold to the Tivoli people? A. Yes, sir.

Q.15 Will you do so on next Saturday? A. Yes, sir.

Q.16 Do you find occurring in the book "Exhibit 2" any other dialogue?

A. I never looked in the book until I looked at it just now.

Q.17 Didn't you state that there was a good deal of dialogue in this book, "Exhibit 2"?

A. That is my recollection of the book, because a good deal of it looks like dialogue.

Q.18 You said it contained the dialogue?

A. I didn't say it.

(read.)  
(Q.23, on examination-in-chief, and answer thereto)



Q.19 You mean, you didn't intend to say it?

A. Well, I know I didn't.

Q.20 Just state what this book, "Exhibit 2", does contain?

A. What I said was, some of the dialogue, and the words of the songs.

Q.21 You don't know whether this dialogue is incorporated in a musical number or not, do you?

A. No, sir; I couldn't state that. I never paid any attention to those things myself.

Q.22 Are you familiar with the cover of this book "Exhibit 2" at all? It says it is published by "Alfred Hays, 4, Royal Exchange Buildings".

A. Yes, sir.

Q.23 Read what it says at the bottom of the title page there.

A. "Right of Representation and Reproduction reserved. Entered at Stationers' Hall."

Q.24 So if you can find out anything else in the book "Exhibit 2" which you call dialogue, besides that which you have mentioned?

A. There is a line here on page 17, "What a funny girl" That is dialogue---that is spoken.

Q.25 How do you know it is dialogue?

A. Because it says here "spoken".

Q.26 Do you know whether or not it is in the midst of a musical number?

A. I couldn't tell you.

Q.27 What occurs immediately before it?

Mr. LOWENTHAL: I object to that, on the ground that the book upon its face shows what occurs immediately



prior to what is spoken, and the book is the best evidence in that respect.

Q.28 What are the words immediately before it, on page 17; is there not a song being sung on the line before it; are there not song-words on the line before it?

Mr. LOWENTHAL: We object to that, on the ground that the book speaks for itself, and is therefore the best evidence.

A. I think so.

Q.29 And are there not song-words on the next line after it? A. There is a chorus after it.

Q.30 You will be here next Saturday, will you, and produce the score? A. Yes, sir.

Q.31 Are those which you have mentioned the only instances of spoken words that you find in that pamphlet "Exhibit 2"?

A. Yes, sir; I think those are all.

Q.32 What is this book I have in my hand here?

A. That is the vocal score of the opera "Falka".

Q.33 What does it contain?

A. It contains the music and the words of the songs.

Q.34 Is that similar to the one sold to the Tivoli people upon which they produced the opera "Falka"? A. Yes, sir.

Q.35 Is that the one sold by you to them?

A. Yes, or one exactly like it.

(It is stipulated and agreed by counsel for the respective parties herein, that the copy of the piano-forte score of the opera "Falka" above referred to, may be in-



introduced in evidence by complainant, and withdrawn upon the substitution in place thereof of a fac-simile copy.

Marked "Complainant's Exhibit A".)

Q.36 You can read music, can you?

A. Yes, sir.

Mr. LOWENTHAL: We object to the introduction in evidence of the piano-forte score, "Complainant's Exhibit A", on the ground that it is already admitted in the evidence in this case that the vocal score and songs of the opera, together with the words of the song, have been published and indiscriminately sold in the market; and on the further ground that it will lumber up the record.

Q.37 The first illustration of dialogue, Mr. Lowler, that you pointed out, was on page 25 of this pamphlet, "Exhibit 2"?

A. Yes, sir.

Q.38 And that occurs at the end of Act II? A. Yes, sir.

Q.39 Let me ask you whether this book "Exhibit 2" is not a reduction of all the words, without the music, of the vocal score?

A. I can't tell that without examination.

Q.40 Let me ask you whether the words are virtually the same; these words, "Good heavens; is this all true? Yes; come brother-in-law, come. No, no. I am your nephew, save me", occur at the end of Act II?

A. Yes, sir.

Q.41 Is this the same position on page 160 of the vocal score, as introduced?

A. The position is the same, but the words are entirely different.

Q.42 In the position in which it occurs in the piano-



forte score is in the way of misce. Is there not a tremolo chord to the octave B natural? A. Yes, sir.

Q.43 Is that sustained during all of that position?

A. You can only tell that by reading the dialogue, because it says here, "spoken on tremolo"; but the way it is printed here you couldn't ever tell that.

Q.44 Is not that music carried on during the speaking of the words; is not that chord sustained through the speaking of the words, on page 160 of the piano-forte score?

(Question objected to by respondent, as leading, and not proper cross-examination.) A. Yes, sir.

A. I can only tell that from the printed instructions; the music does not show it.

Q.45 Is there any stoppage in the music there? Does the music stop according to the marks there? A. No, sir.

Q.46 Is there any rest there? A. No, sir.

Q.47 The music continues to play?

A. Yes, sir; the music continues to play.

Q.48 On page 15 of "Exhibit 2" was the second illustration given by you of alleged dialogue. The words that you said were spoken are as follows: "A letter for me? Ah! it is from the convent! I recognize the Lady Superior's hand. From the convent! I don't like that at all. Good heavens! what do I read". Those are the words you said were spoken? A. Yes, sir.

Q.49 Are not the same words exactly found on page 60 of the vocal score: "A letter for me? Ah, it is from the convent—I recognize the Lady Superior's hand. From the convent? I don't like that at all! Good heavens! What do I read".



A. Yes, sir.

Q.50 Is the music being played, according to the vocal score and piano-forte score on page 60, while those words are being spoken?

A. Yes, sir; what we call melo-dramatic music.

Q.51 And that continues all through those spoken words?

A. Yes, sir.

Q.52 On page 17 of "Exhibit 2" you said was some more dialogue, at the opening of Act II: "Maids. What a funny girl!" Do the same words occur on page 88 of the vocal score, "What a funny girl"?

A. Yes, sir.

Q.53 Is not music being played at the same time?

A. I could not tell. I wouldn't take it to be.

Q.54 You say you read music, do you?

A. Yes, sir.

Q.55 What key is that in, the third bar on page 88?

A. I don't know.

Q.56 And yet you say you read music?

A. Yes, sir.

Q.57 You know flats from sharps?

A. Yes, sir.

Q.58 How many flats are there there?

A. Four.

Q.59 Is that a treble clef?

A. Yes, sir.

Q.60 And is that a bass clef?

A. Yes, sir.

Q.61 What note is that on the upper line of the second bar on that page?

A. F.

Mr. LOWENTHAL: I object to this entire line of testimony, on the ground that it is an attempt to bolster up the records; that it is not proper cross-examination; the witness having been made a witness for the complainant, it



is entirely immaterial and irrelevant to this issue; and we ask that the whole of that evidence be stricken out on that ground.

Q.62 You know a pause when you see it, do you not?  
A. Yes, sir.

Q.63 Do you find any pauses in the music of the second bar on page 88?  
A. I find an eighth rest in the first measure, and there is a similar rest further on.

Q.64 How many measures are there in the second bar?  
There are five, are there not?  
A. Yes, sir.

Q.65 Does the tempo keep up through those five bars?  
A. It keeps up. It changes time, but the music keeps playing.

Q.66 Now, from the first note in the first measure of bar two, to the last note in the last measure of bar two, there is no pause in the music?  
A. No, sir.

Q.67 Then the music is being played all the time?  
A. Yes, sir.

Q.68 And while this music is being played those words "What a funny girl" occur?  
A. Yes, sir; they occur while the music is being played.

Q.69 (By Mr. LOWENTHAL.) But they are not sung; they are spoken.  
A. They are spoken. They have no reference to the music that is played.

Q.70 (By Mr. LOWENTHAL.) Where you have pointed out in the book "Exhibit 2", ~~xxxxxxx~~ containing some of the dialogue and the words of the songs, ~~xxxx~~ a certain amount of dialogue-- the same words do not appear in the piano-forte score.



although the substance may be there, but the words and language is different? A. Yes, sir; I just saw that.

Q.71 In other words, there is a different translation of the words of the song from the original production?

A. Evidently.

Q.72 Perhaps by a different author---it appears to be by a different translator? A. Yes, sir.

Q.73 Mr. Redding asked you whether when these words were spoken there did not appear to be music to the words in the vocal score; now, that music is not set to those words, is it? A. No, sir; there is no air to it.

Q.74 Are the persons who speak that portion of the dialogue in anywise guided by what the orchestra play?

A. Not at all.

Q.75 It is entirely separate and independent? In other words, those words are not set to music?

Mr. REDDING: I object to all this, and move to strike out the answers, on the ground that he is leading the witness.

Q.76 Are any of the dialogues that you have mentioned, and upon which you were examined by Mr. Redding---are there any of them set to any particular melody?

A. No, sir.

Q.77 No melody whatever?

A. No, sir.

Q.78 How are they spoken?

A. Just spoken simply as dialogue.

Q.79 And nothing else? A. And nothing else.

Q.80 Are they spoken in any other way, excepting as one man speaks to another



man speaks to another as he meets him upon the street?

A. That is all. It is quiet, and the lawyer is not talking.

Q.81 (By Mr. REDDING.) In all of these alleged bits of dialogue which you have pointed out, you find that music is being played by the orchestra at the same time, do you not?

Mr. LOWENTHAL: We object to that, on the ground that the witness has already answered the question.

Q.82 That is the fact, isn't it? A. Yes, sir.

Q.83 Now, don't people on the stage who are speaking this alleged dialogue have to do so so as to get it in in the proper time with reference to the progress of the music, so that the next singing word can come in on the proper time and movement? A. Well, the rule in these cases, in representation, is that a tremolo---the music guides itself by the people on the stage; the music keeps up the tremolo until the people are through with talking.

Q.84 And as long as the people have not finished speaking, the music keeps right along? A. Yes, sir.

Q.85 The music does not stop while the people are speaking these words? A. No, sir.

Q.86 Is the opera of "Falka" divided into a series of musical numbers? A. Yes, sir.

Q.87 Are there various portions of the opera given up to dialogue, without any music whatever?

A. Well, I think there are, as much as I can remember. I think I have seen it.

Q.88 Is it not a fact that between the musical numbers



occur dialogue spoken between persons, during which there is no music, and the orchestra is quiet, and the leader is not conducting? A. Well, as far as I can remember, yes.

Q.89 This opera "Falka" is similar to other operas of like nature? A. I must confess that I don't remember the opera exactly, but I think I have seen it.

Q.90 Mr. Lomler, this that I show you now, is marked "Respondent's Exhibit 1"; and if you will examine it you will find it to be described as the libretto of the opera "Falka", independent of the music; if you will look on page 1, you will observe that it is headed, "Falka. Act I"? A. Yes, sir.

Q.91 And it starts in by giving the setting of the scene, with a full description of the stage apparatus, and grouping, and then comes the chorus----

Mr. LOWENTHAL: (Interrupting.) We object to Mr. Redding testifying; he is not a witness, and it is improper. I say it is not proper cross-examination.

(The matter of the objection of counsel for respondent having been submitted to the Court for its decision, the Court decides that this examination of the witness by complainant is proper cross-examination.)

Q.92 On the first page of "Respondent's Exhibit 1", which is included in the depositions taken in London, do you find any of the song-words?

A. Well, I caouldn't tell you without comparing the two books.

Q.93 Do you find anything in "Respondent's Exhibit 1"



which is in "Respondent's Exhibit 2"? Mr. March 2nd, 1889.

Answer A. No, sir; I do not.

Q.94 In any instance at all, so far as you can examine?

A. No.

Q.95 On page 15 of "Respondent's Exhibit 2" you pointed out certain words which you declared to be dialogue. Do you find anything similar to that, or do you find the exact words of the libretto introduced here as "Respondent's Exhibit 1", attached to the London depositions?

A. I couldn't tell you that, because those are entirely different books.

Mr. LOWENTHAL: Different words; by different translators.

A. They appear to be entirely different books.

(It is admitted by both complainant and respondent, that respondents did not use books like the book "Respondent's Exhibit 2" in the production of the opera "Falka" at the Tivoli Opera House.)

Q.96 I understand that this "Complainant's Exhibit A", which is the piano-forte score, was used in the production of the opera of "Falka" at the Tivoli? A. Well, I presume it was.

(Examination continued, in conformity with agreement of counsel, until Saturday, March 2nd, 1889, at half past ten o'clock A. M.)



that three weeks at the Tivoli Saturday, March 2nd, 1889.

Present: Mr. REDDING, of counsel for complainant;  
Mr. LOWENTHAL, of counsel for respondent.

EXAMINATION-IN-CHIEF

of

WILLIAM F. ROCHESTER.

On behalf of complainant.

Q.1 (By Mr. REDDING.) What is your business?

A. An actor.

Q.2 Were you ever employed at the Tivoli Opera House?

A. Yes, sir.

Q.3 In what capacity? A. Stage manager and actor.

Q.4 Between what dates, as near as you can remember?

A. Well, I came there on August 6th, 1885.

Q.5 Were you the stage manager in 1885? A. Yes, sir.

Q.6 Were you the stage manager in 1886? A. Yes, sir.

Q.7 What were your duties as such stage manager?

A. To direct the production of pieces; to put them on.

Q.8 Do you remember of the opera "Falka" being produced at the Tivoli Opera House between the dates of your employment there?

A. Yes, sir.

Q.9 About what time was it produced?

A. Along about January 4th, 1886.

Q.10 How long did it run? A. Three weeks.

Q.11 Did you put it on afterwards? A. No, sir.

Q.12 Do you know whether it has been put on for more

than three weeks at the Tivoli Opera House?

A. I couldn't tell. It was never put on after this time while I was there.

Q.13 This time you speak of was a continuous run of three weeks?

A. Yes, sir.

(Complainant introduces in evidence a programme of the Tivoli Opera House of the opera of "Falka", of the date of January 4th, 1886. Marked "Complainant's Exhibit B".)

Mr. LOWENTHAL: I object to the introduction in evidence of the programme "Complainant's Exhibit B", on the ground that there is no evidence here that this programme was published or exhibited by the respondent, and is therefore incompetent.

Q.14 Do you recognize this programme, "Complainant's Exhibit B" as one of the Tivoli Opera House programmes?

A. I do not recognize the programme, but I recognize the cast.

Q.15 Does that correctly represent the cast of the opera "Falka" as it was given at the Tivoli Opera House?

A. As near as I can remember; yes, sir.

Q.16 The date of that programme is January 4th, 1886?

A. Yes, sir.

Q.17 Was that the first night of the production of the opera "Falka" at the Tivoli Opera House?

A. Yes, sir.

Q.18 Does this programme, "Complainant's Exhibit B", contain the cast as you produced the opera "Falka" on that

35



night? A. As near as I can recollect.

Q.19 Did Mr. Ed. Stevens take the part of "Folbach" in the production of that opera?

A. Yes, sir.

Q.20 Did he play at the Tivoli Opera House that night?

A. Yes, sir.

Q.21 Was that his first appearance there? A. Yes, sir.

Q.22 Did Mr. R. D. Valerga take the part of "Tancred"?

A. Yes, sir. (Question objected to by respondent.)

Q.23 Did Mr. A. Messmer take the part of "Arthur"?

(Question objected to by respondent, as leading and suggestive.)

A. Yes, sir.

Q.24 Did Mr. J. T. Kelly take the part of "Pelican"?

A. Yes, sir.

Q.25 What part did Kate Marchi take? Did she take the part of "Konrad"?

(Question objected to by respondent as leading.)

A. I don't remember that.

Q.26 Did Frank Valerga take the part of "Tekeli"?

A. Yes, sir.

Q.27 Was George Harris an employe of the Tivoli at that time? A. The chorus singer?

Q.28 Yes, sir. A. Yes, sir.

Q.29 Was Mr. M. Cornell? A. Yes, sir.

Q.30 Did he take part in that opera? A. Yes, sir.

Q.31 Did Mr. Franklin take part in that opera?

A. Yes, sir.

Q.32 Did Helene Dineon? A. Yes, sir.

Q.33 Did she take the part of "Falka"?

(Question objected to by respondent, as leading and suggestive.)

A. Yes, sir.

Q.33 Was Mamie Taylor employed there at that time?

A. Yes, sir.

Q.34 Did she take the part of "Edwige"?

(The same objections by respondent.)

A. Yes, sir.

Q.35 Louise Leighton: did she take the part of "Alexina"?

A. Yes, sir.

Q.36 Louise Giroux: did she take the part of "Minna"?

(The same objections by respondent.)

A. Yes, sir.

Q.37 Emily Possazi: did she take the part of "Jonatha"?

(The same objections by respondent.)

A. Yes, sir.

Q.38 Who was the leader of the orchestra at that time?

(Question objected to by respondent, as immaterial and irrelevant.)

A. W. W. Furst.

Q.39 Is that the party who appears on this programme, "Exhibit B", as Conductor?

A. Yes, sir.

Q.40 "Wm. F. Rochester: Stage Manager"; is that yourself?

A. Yes, sir.

Q.41 You were there as stage manager? A. Yes, sir.

A.42 Is this the Argument that was used in the production of the opera "Falka" at the Tivoli Opera House, as shown



on this programme "Exhibit B"?

A. I don't know as I ever read this Argument.

Q.43 Then you cannot state?

A. No, sir. I don't think I ever read it.

Q.44 What book or books, and what kind of books, were used by you as stage manager in the production of this opera "Falka" at the Tivoli Opera House, Mr. Rochester? What I mean by that is, did you have the piano-forte score?

A. Yes, sir; we had a piano score, music.

Q.45 Will you look at "Complainant's Exhibit A" which I now show you, and state if that is or is not a book similar to the ones used by you in the production of "Falka" at the Tivoli Opera House?

Mr. LOWENTHAL: We will admit that that was the book used for the purpose of orchestration, and the rehearsal of the music.

Q.46 Was this libretto, marked in the depositions taken in London as "Respondent's Exhibit 1", the one used in that production?

A. This is not the book that I produced the opera from. I have seen this book though.

Q.47 What was the book that you produced the opera from?

A. Well, from a manuscript. We used to put them on from manuscript books there.

Q.48 Where was that manuscript you speak of procured? Do you know where that manuscript came from?

A. I got it from Jo. Kralling.

Q.49 Do you know where Jo. Kralling got it from?

Mr. LOWENTHAL: I object to the question, on the ground that it calls for hearsay testimony.

A. The book came from Chicago.

Q.50 What did that book contain?

(Question objected to by respondent, on the ground that the book itself is the best evidence of what it contained.)

A. It contained the dialogue of the opera of "Falka".

Q.51 Do you know whether the dialogue, or any of the words spoken, or any of the things known as "gags" were similar to those used in the New York performance of this opera?

A. I think they were. I think they were, but I don't know whether---I am not sure whether they were the exact ones or not. I never had seen the production in New York, but I was told that those were the gags used.

Mr. LOWENTHAL: We object to that answer, and move that it be stricken out, on the ground that the same is hearsay.

Q.52 Where did you see this book which is attached to the London depositions and marked "Respondent's Exhibit 1"?

A. Mr. Krelling showed it to me.

Q.53 When did he show it to you?

A. Just prior to the production of the opera at the Tivoli Opera House.

Q.54 What use did you make of it in the opera? A. None.

Q.55 None whatever? A. No, sir; the books were usually handed to me in manuscript. Very few printed books were



ever given to me. *Respondent's 1*

Q.56 Did Mr. Krelling tell you where he got the book that you did use; or from whom he got it?

A. Well, I practically know where it came from.

Q.57 Where? A. From Chicago.

Q.58 From in Chicago?

A. A man by the name of McCarthy, or McCartney, or some such name as that. *did not state anything in reference*

Q.59 Do you know who he is? *that an order to go ahead with*

A. I don't know who he is. I was told by the Bidell *the* *to you know from what source that manuscript book*

Mr. LOWENTHAL: We object to that, as being entirely hearsay. *Have you ever seen any other production of the op-*

THE WITNESS: (Continuing) Mr. Bidell told Mr. Krelling that he could get the opera in Chicago.

Q.60 That was in manuscript, was it not?

(Question objected to by respondent, as leading, and suggestive.) *any other production of the opera "Felix"*

Q.61 Well, that was the book which you said you got in manuscript, was it not? *that is, I saw a production of it in*

(Question objected to by respondent, as leading and suggestive, and therefore improper.)

Mr. REDDING: I am endeavoring to identify the particular books he refers to. *It was two years after the*

Q.62 Which book do you refer to, Mr. Rochester; this printed book attached to the London depositions and marked "Respondent's Exhibit 1", or which one?

A. Mr. Krelling handed me a manuscript book, and also

brought on to me a book similar to "Respondent's 1" which is attached to the depositions taken in London, , and said, "We will produce "Falka" from this".

Q.63 Which book did he bring you?

A. The manuscript book.

Q.64 What did Mr. Krelling say, if anything, in regard to the manuscript book?

A. Mr. Krelling did not state anything in reference to the manuscript at all; it was just an order to go ahead with the work.

Q.65 Do you know from what source that manuscript book was made?

A. No, Sir.

Q.66 Have you ever seen any other production of the opera "Falka" except the one at the Tivoli Opera House?

A. I don't think I ever have.

Q.67 Were you not in New York?

A. No, sir; I did not see the production in New York.

Q.68 Never saw any other production of the opera "Falka" than the one at the Tivoli Opera House?

A. No, sir. That is, I saw a production of it in New York, but that was last summer, long after it was produced here at the Tivoli.

Q.69 What production was that which you saw in New York?

A. McCall's production. It was two years after the opera "Falka" was produced at the Tivoli.

Q.70 Will you state how you knew it was the opera "Falka" that you saw in New York?

A. Well, I knew it from my knowledge of the music, and



my knowledge of the business.

Q.71 Was there any similarity in the music and business between the production of the opera "Falke" that you saw in New York, and your production of it here at the Tivoli?

A. The music was the same.

Q.72 Will you state in what particulars there was a similarity?

Mr. LOWENTHAL: I object to the question, on the ground that whatever the witness saw in New York transpired subsequent to the commencement of this suit, and there is nothing in issue here justifying the evidence of this witness in that regard.

Q.73 Was the cast the same? That is to say, were the names of the characters the same?

A. Yes, sir.

Q.74 Well, continue, and state in what other points than the music they were similar?

A. Well, as a general production, stage business. I don't remember the lines particularly, because I was not in the cast myself. I don't remember the lines, but as a rule the general idea of the business struck me as being something like the production at the Tivoli; something like it.

Q.75 You were not in the cast of the Tivoli production?

A. No, sir; and I didn't remember any of the lines at all.

Q.76 Were the scenes the same, the stage settings?

A. No, sir.

Q.77 What points of difference were there in the scenes?

(Question objected to by respondent, as entirely

irrelevant and immaterial.)

Q.78 I mean, in the stage settings; of course I don't mean that they should necessarily have the same properties.

Mr. LOWENTHAL: I object to the question, on the further ground that the answer would not cut any figure in the disposition of this case.

A. Well, there was considerable difference in the stage settings in the first act; and in the second act it was very similar, but the third act was different.

Q.79 Can you remember the points of difference?

A. Well, what was used on the right, was used on the left in the New York production.

Q.80 Where is the first scene laid in the first act in the opera of "Falka"?

A. Well, I really forget, it has been so long ago.

Q.81 You said that the right entrances in the production here were made the left entrances in the New York production; is that it?

A. In some instances; yes, sir.

Q.82 Well, was or was not the general design of the stage settings the same?

(Question objected to by respondent, as leading and suggestive.)

Q.83 What was the general design of the stage settings of the opera of "Falka" at the Tivoli production? Can you remember, and if so will you state, what the general design of the stage settings in the first act of the opera "Falka" were in the Tivoli production?



A. In the Tivoli production we used a set-house on the right of the stage, and a house in angles, the angles pointing to the front of the stage, with shutters, and a trap leading down under the stage.

Q.84 Was it an interior or exterior scene?

A. It was an exterior scene, a street scene. In the New York production it was different.

Q.85 State what it was in the New York production?

A. Well, the house was on the left of the stage.

Mr. LOWENTHAL: I object to this testimony, on the ground that it is irrelevant and immaterial.

THE WITNESS: (Continuing) The set-house was on the left of the stage, and the house which we used in the Tivoli production in the center, was on the right in the New York production.

Q.86 Was it an exterior or interior scene in the New York production? It was an exterior scene, a street scene, wasn't it?

A. Yes, sir.

Q.87 What was the setting in the third act of "Falka" in the Tivoli production, if you remember?

(Question objected to by respondent, as immaterial and irrelevant.)

A. It was an exterior scene, the exterior of a convent on the left, and, I forget, but I think it was a church to the right---I am not sure.

Q.88 What was the setting of the third act of "Falka" in the New York production which you saw?

(The same objections by respondent.)

A. It was reversed.

Q.89 Was it an exterior scene?

A. Yes, sir.

Q.90 Was there a convent setting on one side?

A. Well, no; it did not strike me as being intended for a convent.

Q.91 Was it a church scene?

A. Well, yes; something that would represent a church.

Q.92 Was the music the same in both productions?

A. Yes, sir; I think so. It struck me as being so.

Q.93 How long have you been in the theatrical business?

Mr. Rochester? A. Nearly fifteen years.

Q.94 And you are still residing in this city?

A. Yes, sir.

Q.95 And still engaged in that business? A. Yes, sir.

#### CROSS-EXAMINATION

of

WILLIAM F. ROCHESTER.

Q.1 (By Mr. LOWENTHAL.) Mr. Rochester, the book now shown you, which is "Complainant's Exhibit A", is a book containing all the music, and the words of the songs, and some of the business of the opera "Falka", is it not? A. Yes, sir.

Q.2 And some of the dialogue and indications of stage business? A. Yes, sir.

Q.3 Books similar to this book "Exhibit A" which I have called your attention to, are published and generally circulated



ed, and generally sold in the open market in San Francisco, as well as throughout the United States, and every where else, are they not?

A. Yes, sir.

Q.4 And any one can buy them?

A. Yes, sir.

Q.5 And those books were so in circulation prior to the production of the opera "Falka" at the Tivoli Opera House?

A. We did not have any trouble to get them.

Q.6 And you did get them for the production of that opera?

A. Yes, sir.

Q. 7 You know that the Tivoli management engages a gentleman by the name Koppitz, do you not, who arranged an orchestration of the opera "Falka" for the Tivoli Opera House, from this piano-forte score, "Exhibit A"?

A. Yes, sir; I think Mr. Koppitz is the man that did it.

Q.8 From this piano- forte score that you now have in your hands, the orchestration for the production of the opera "Falka" at the Tivoli Opera House, was prepared by Mr. Koppitz, was it not?

A. Yes, sir; I think it was from this score, or one similar to it.

Q.9 You had not any manuscript score of the music, had you, at this time, other than what was prepared by Koppitz from this piano-forte score?

A. I never had anything to do with the orchestration.

Q.10 But do you not remember, as stage manager, that Mr. Koppitz did prepare an orchestration from this piano-forte score which you have now in your hand?

A. They sometimes have two men.

Q.11 Lindtner and Koppitz? Book of that character, that

A. Yes, sir; I think so. Page and music combined

Q.12 Now, Mr. Rochester, I will ask you to state, as an actor and stage manager, if that piano-forte score contains indications of business, such as from that book alone you would be in a position to prepare this opera for the stage, so far as the position of the people is concerned? Answer to be qualified

A. Only in places. business, should obtain a piano-

Q.13 Quite a number of places? Asked in it, if he possessed

A. Yes, sir; there are a number of places in here that tells what to do. For instance, "There the bells go", and one would naturally know from that that the bells are to be rung there. Said in my opinion, Mr. Rochester, is not the musical

Q.14 Now, does or does not that book, as it is published, printed and circulated, which you have in your hand, "Complainant's Exhibit A", contain the major portion of that opera, in fact; that is, the words and music of the songs are the principle part of the opera as it is produced, are they not?

A. I don't understand the question. musical success

Q.15 (Q.14 repeated.) A. Well, if you don't speak of dialogue; yes, sir; but if you speak of dialogue, then I say you couldn't get along with the score--you could not get along with the vocal score alone. many instances.

Q.16 But you have known instances, Mr. Rochester, have you not, where the dialogue was made up by any person qualified to do it, to suit the words of the songs, and the music, and an opera thus produced in that manner? Rochester, is this

A. Yes, sir, I have known operas to be made up.



Q.17 From that book, or a book of that character; that is, by adding to the words of the songs and music contained in this book, a dialogue was prepared to suit it?

(Question objected to by complainant, as immaterial, irrelevant and incompetent, and not proper cross-examination.)

Q.18 What I mean is this: suppose a person to be qualified, and understanding that business, should obtain a piano-forte score with the directions published in it, if he possesses the originality, could he not produce a production of the opera "Falka"? WILLIAM F. ROCHESTER.

A. I would not vouch for its success.

Q.19 In any opera, Mr. Rochester, is not the musical portion of it the main portion of the opera, whether it be grand or comic opera; the dialogue is a sort of secondary consideration, is it not?

A. I don't think so. You cannot get along without good dialogue and good music.

Q.20 That is very true, but is not the musical success of the opera the main thing?

A. Well, I have known good dialogues to make poor music stand out to better advantage, than good music to make bad dialogue stand out, in many instances.

Q.21 Well, does not the dialogue in "Falka" mainly consist of puns and gags? A. I don't remember enough of it to say. I don't remember half a dozen speeches in it.

Q.22 What I want to get at, Mr. Rochester, is this: is it not a fact that the major part of the time occupied in

midst of a musical number?

A. All that I have seen; yes, sir.

Q.5 Was not the book that Mr. Krelling handed to you the book which you have spoken of as having been received from Chicago?

A. I couldn't tell you. There were twenty scores of it.

Q.6 Mr. Krelling handed you the book or manuscript, and said that the opera "Falka" was to be the next opera produced; you so stated?

A. Yes, sir.

Q.7 Was that the book you had reference to as being a manuscript? Was it a manuscript or a printed score?

A. A manuscript.

Q.8 Did you proceed to put on the opera from that manuscript?

A. Yes, sir; but I used one of those books like "Exhibit A" also.

Q.9 (By Mr. LOWENTHAL.) And you had twenty of those?

A. Yes, sir.

Q.10 (By Mr. REDDING.) What did the manuscript that Mr. Krelling handed to you contain, as well as you can remember?

A. Well, it contained a general idea of the stage business---business required for the piece.

Q.11 Did it contain the dialogue?

A. Yes, sir.

Q.12 (By Mr. LOWENTHAL.) Something like all prompt-books of operas that are put on, I suppose?

A. Yes, sir.

Q.13 (By Mr. REDDING.) Did it contain the directions for the setting of the scenes, that manuscript?

Mr. LOWENTHAL: I interpose the objection that this is not proper examination.)



Mr. REDDING: Then I will withdraw the question.

Q.14 You stated that it contained the general directions, I understand? A. I didn't contain the directions for the setting of the scenes, or anything of that kind.

Q.15 (By Mr. LOWENTHAL.) That was a matter you used your own judgment about, was it then?

A. Yes, sir, I used my own judgment about it. I had an idea of what the setting was.

Q.16 (By Mr. REDDING:) Where did you get that idea from, if you please? A. Well, from hearsay.

RE-CROSS-EXAMINATION

of

WILLIAM F. ROCHESTER.

Q.1 (By Mr. LOWENTHAL.) That published score there that you are now holding in your hand, "Complainant's Exhibit A", upon the first page thereof, contains the Argument of the whole opera, does it not? A. Yes, sir.

Q.2 Including dialogue, as well as the songs; that is, of the entire opera? That is, it is a synopsis of the dialogue?

A. It is the story of the opera.

Q.3 The entire story of the opera abbreviated?

A. Yes, sir, as followed out by this score.

Q.4 And any person having that synopsis of the opera, with the score, couldn't he prepare a dialogue to suit it more readily than otherwise? A. Yes, sir.

Q.5 Would you not be in a position, if you had never

seen this opera before, if you should find this score, and this synopsis, as you see it on the first page there of "Complainant's Exhibit A", wouldn't that give you a full idea of the people on the stage, and a full idea of the scenes?

A. It don't say anything about scenery.

Q.6 But it would give you an idea of what was wanted on the stage, wouldn't it, in the three acts?

A. Well, in the first act it speaks of a convent, but the convent does not occur until the third act. There is a general idea of the piece given here, right through, and any stage manager can with alibretto put it on fairly well.

Q.7 Please look at page 160 of "Exhibit A", and state whether or not there is some dialogue there spoken?

A. Yes, sir; it is spoken.

Q.8 It is accompanied by music? A. Yes, sir.

Q.9 But are the words set to the music?

A. Well, they fill out the time that the music is being played.

Q.10 That is the tremolo of the music? A. Yes, sir.

Q.11 It is a musical number. A. Yes, sir.

Q.12 But it is not set to the words that are spoken on the stage? A. No, sir.

Q.14 It is simply an independent music, and the people are not guided by the music, and there is no particular melody attached to the words that are there? A. No, sir.

Q.15 But they are simply spoken, just as a person would speak to another off the stage?

A. They are spoken on the stage in a conversational way.



Q.16 But accompanied by the tremolo?

A. Yes, sir; and the latter is governed by the time taken up by the dialogue.

Q.17 Are there any other places in that book "Exhibit A" of that kind; any indication of business or dialogue?

A. I don't see any more. I see indications of business.

Q.18 (By Mr. REDDING.) Do you call the music, or a musical number a part of the dialogue in an opera; or is an opera divided into two classes, namely, musical numbers, and periods of dialogue?

A. Two classes.

Q.19 Then that which you pointed out is a part of the class known as dialogue, or a part known as a musical number?

A. Part known as a musical number.

Q.20 (By Mr. LOWENTHAL.) But spoken? A. Yes, sir.

~~REDACTED~~ 11th St., 1891.

Present: Mr. REDDING, of counsel for complainant;

Mr. LOWENTHAL, of counsel for respondent;

Mr. WILSON, complainant.

Mr. Lowenthal objects to the further taking of tes-

timony. The Examiner declines to take any further testimony until an order shall have been obtained from the Court. Following further testimony is to take.

The Examiner declines to take any further testimony until an order shall have been obtained from the Court. Following further testimony is to take.

Wednesday, April 3rd, 1889.

Present: Mr. REDDING, of counsel for complainant;

Mr. FRENCH, complainant.

No appearance on behalf of respondents.

This day was set, at the request of complainant's counsel for proceeding further with the examination.

No appearance being made by or on behalf of respondents the examination is further continued in compliance with request of complainant's counsel, to Friday, April 5th, 1889, at two o'clock P.M.

Friday, April 5th, 1889.

Present: Mr. REDDING, of counsel for complainant;

Mr. LOWENTHAL, of counsel for respondents;

Mr. FRENCH, complainant.

Mr. Lowenthal objects to the further taking of testimony herein on the ground that the time within which testimony may be taken herein has expired.

The Examiner declines to take any further testimony herein until an order shall have been obtained from the Court allowing further testimony to be taken.

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Friday, April 12th, 1889.

Present: Mr. REDDING, of counsel for complainant;  
Mr. LOWENTHAL, of counsel for respondents.

EXAMINATION-IN-CHIEF

of

THOMAS HENRY FRENCH.

On behalf of complainant.

Q.1 (By Mr. REDDING.) State your name, place of residence and occupation.

A. My name is Thomas Henry French, my residence New York, business, theatricals of all kinds, manager and play owner, and so forth; and I am complainant in this suit.

Q.2 Mr. French, the respondents in this suit, namely, the Krelling Brothers, have, among other testimony, introduced what they denominate "Respondents' Exhibit 1", attached to a deposition of Alfred Hays taken in London. I will hand that to you, and ask you: do you know this book?

A. I know the book.

Q.3 I call your attention to the writing on the opening page of the libretto of that book. The writing there says: "Property of F. J. McCarty. Presented to him by E. F. Steyne, Comedy Theatre, London, E.". Do you know who E. F. Steyne is?

A. Yes, sir.

Q.4 Who was he in 1884?

A. He was a stage manager that I imported from London.

Q.5 Where was the operetta of Falke first produced in America?

A. Philadelphia.

Q.6 I will call your attention to the first page inside the cover of said "Respondents' Exhibit 1", and to the writing thereon, which writing is as follows: "Original cast in "America. Produced 1st time in America at Haverly's Broad "St. Theatre, Philadelphia, Tuesday, March 4th, 1884"; and then follows a list of names of the persons opposite the cast of characters. Now read that list and see whether or not they correspond to your production of the operetta at that place at that time?

(Question objected to by respondents, as entirely immaterial, irrelevant and incompetent.)

A. That was the original cast, to the best of my knowledge and belief. There might have been one name changed.

Q.7 Do you know whether this writing is in the hand writing of Mr. Steyne or not? A. I do not.

Q.8 Have you ever seen any other copies of this book which is marked "Respondents' Exhibit 1"?

A. About twenty, which were imported for the artists to study from.

Q.9 How were they imported, and by whom? A. By me.

Q.10 Where did you receive them from?

A. From Alfred Hays.

Q.11 Who is Alfred Hays?

A. He is a music publisher in London, who owned an interest in the opera of Falke.

Q.12 Was this book here marked "Respondents' Exhibit 1" published for circulation?

(Question objected to by respondents, on the ground

26



Q.6 I will call your attention to the first page inside the cover of said "Respondents' Exhibit 1", and to the writing thereon, which writing is as follows: "Original cast in "America. Produced 1st time in America at Haverly's Broad "St. Theatre, Philadelphia, Tuesday, March 4th, 1884"; and then follows a list of names of the persons opposite the cast of characters. Now read that list and see whether or not they correspond to your production of the operetta at that place at that time?

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A. About twenty, which were imported for the artists to study from.

Q.9 How were they imported, and by whom? A. By me.

Q.10 Where did you receive them from?

A. From Alfred Hays.

Q.11 Who is Alfred Hays?

A. He is a music publisher in London, who owned an interest in the opera of Palka.

Q.12 Was this book here marked "Respondents' Exhibit 1" published for circulation?

(Question objected to by respondents, on the ground

face showing the publication to have been prior to the time of the alleged proprietorship by this complainant.

A. I do know.

Q.16 What is your answer; what is the fact?

A. That they were certainly reserved.

Q.17 How long have you been in the play business, Mr. French?

A. Twenty-two years.

Q.18 To what firm do you belong?

A. Samuel French & Son.

Q.19 Who is Samuel French?

A. My father, who resides in London; the head of our house.

Q.20 Have you had any familiarity, and if so to what extent, with the producing of plays from the manuscripts of authors, and with the production of the rights of authors?

A. I have had great experience all of said twenty-two years.

Q.21 Will you state then what method was followed in this instance in the production of Falke in London, and also in the production of it in the United States, regarding the proprietorship of the play?

A. The owners in London sold the proprietary right of America to me, and I sub-let it to Mr. John A. McCall, the manager for most of the United States.

Q.22 Have you paid royalties to the owners of this opera in London?

(Question objected to by respondents, as entirely irrelevant and immaterial.)



A. I have.

Q.23 Has Mr. McCall paid you?

(The same objections by respondents.)

A. Many thousands of dollars.

Q.24 Has there been any other production of this operetta of Falke in the United States except the one involved in this suit, which was not under your knowledge and information?

(Question objected to by respondents, as incompetent immaterial and irrelevant.)

A. No, there has not.

Q.25 If there had been would you have known it?

(The same objections by respondents.)

A. Yes, sir; I would have known it.

Q.26 Have there been any performances of the operetta Falke for which royalties have not been paid to you or your agents in America, except the one involved in this suit?

(Question objected to by respondents, as entirely irrelevant and immaterial.)

A. No, there have not.

Q.27 Have you received any royalties for the production of this opera by the respondents, at the Tivoli?

A. No, I have not.

Q.28 Have any of your agents or representatives received anything from the respondents?

A. No, they have not.

(It is agreed by both complainant and respondents as a fact that respondents have paid complainant nothing on account of royalties for the production of this operetta Falke.)

(Question objected to by respondents, as entirely incompetent; and as leading and suggestive.)

A. Mr. Samuel French is my father, and my partner--- the same firm.

Q.35 Mr. French, I desire to call your attention to your testimony taken by deposition in New York, and to certain questions and answers therein, for further explanation. Do you know the Mr. McCarty whose name appears in writing at the top of the second page of the book marked "Respondents' Exhibit 1", attached to the deposition taken in London?

A. It says, "Property of F. J. McCarty. Presented to him by E. T. Steyne, Comedy Theatre, London E."

Q.36 Well, do you know who that Mr. McCarty is?

A. I do not.

Q.37 Do you know what the Comedy Theatre in London is?

A. I do.

Q.38 Was Mr. Steyne connected with the Comedy Theatre in London?

A. He was.

Q.39 Was this opera produced there, the opera Falka?

A. It was, I think. To the best of my knowledge and belief it was.

Q.40 Will you state for what purpose Mr. Steyne came over to America, to Philadelphia, and under whose employ?

(Question objected to by respondents, as entirely irrelevant and immaterial.)

A. As stage manager, and under my employ.

Q.41 Did he come over for the purpose of the production of this opera of Falka?



(Question objected to by respondents, as leading and suggestive; and as irrelevant and immaterial.)

A. He did.

Q.42 Mr. REDDING: Mr. Examiner, I desire to proceed in the proper way, and I desire instructions as to how to proceed in this particular: I wish to have the witness testify as to the relation occupied by Mr. Steyne in reference to the composers of this opera Falka, and to the agents of the composers, and assignees in America.

THE EXAMINER: I would suggest this: Why not ask him if Mr. Steyne sustained any relation to those people, and if so, what.

Q.42 I will ask you this question, Mr. French: Did Mr. Steyne occupy any relation whatever to the composers of this opera Falka, or to their assignees, or licensees in England, or in the United States, and if so, what?

(Question objected to by respondents, as incompetent and irrelevant and immaterial.)

A. I supposed that in London he was the second stage manager; and when I was about to purchase the opera Falka, we had to know the business, and they selected this gentleman as knowing the business, and sent him over here in my employ.

Mr. LOWENTHAL: We ask that that be stricken out, on the ground that it is a matter not within the knowledge of this witness; he is speaking simply from supposition.

Q.43 Who recommended Mr. Steyne to you?

(Question objected to by respondents, as irrelevant

and immaterial.) asked the property is also that the  
A. Mr. Farnie.

Q.44 The composer of the operetta? A. Yes, sir.

Q.45 Do you know of your own knowledge whether Mr. Farnie gave any instructions to Mr. Steyne regarding the business of this opera? A. He did.

Q.46 Will you explain to the Court what you mean by the term "business" of the opera, as in this instance is intended?

A. The word "business" in an opera means where they cross the stage, and the grouping of the characters, and the situation at the end of an act when the curtain comes down, and everything of that kind. It is impossible to produce an opera properly without it.

Q.47 Do you know, of your own knowledge, who gave Mr. Steyne the business of this opera for him to proceed with as stage manager?

A. No, I do not. I was in New York, and he was in London.

Q.48 Who sent Mr. Steyne to you? A. Mr. Farnie.

Q.49 Will you state what the duties of a stage manager are with reference to the production of an opera?

(Question objected to by respondents, as entirely irrelevant and immaterial, and not part of this issue involved in this case.)

Q.50 Well, what were the duties of Mr. Steyne in connection with the production of this opera?

(The same objections by respondents.)

A. Mr. Steyne's duties were to see that the



principals and chorus ~~singers~~ sang properly; to give them the different bits or points of business; and to superintend the rehearsals so as to make a proper first ~~performance~~ performance.

Q.51 What were his duties with reference to the wishes of the composer of this opera in reference to its production in America?

Mr. LOWENTHAL: We object to that, on the ground that it is entirely incompetent, in this; that it is already in evidence that Mr. Styne prior to his employment by Mr. French was in London, and therefore it is not within the personal knowledge of Mr. French as to the desires of the author upon this subject.

A. He had nothing whatever to do with the business or the sale of fees, or anything connected with the opera; he simply had to do with the production.

Q.52 Had he any right to assign, sell or transfer the proprietorship of the title to this opera?

(Question objected to by respondents, as incompetent, as not being within the knowledge of this witness.)

Q.53 Do you know of your own knowledge whether he had or not? A. I do. He had no rights whatever in the selling or assigning of the opera.

Mr. REDDING: I would like to ask the Examiner for instructions regarding the following matters: in the deposition of Mr. French taken in New York occurs the fol-

lowing question and answer---but before reading that I will state that I desire to have Mr. Frankh's attention called to this question and answer, because I think there is a typographical error in the writing of the answer, or a statement where the words following each other do not make sense. I do not ask to have any further question and answer made upon that point if it is improper, but I desire to have that correction put in now for the purpose of correcting that error.

Mr. LOWENTHAL: We object to that statement of counsel on the ground that it is leading and suggestive, being made in the presence of the witness.

Q.54 (By Mr. REDDING.) I will now read to you the following questions and answers, and ask you to state if they are correct: "Q. In what form have the dialogue and words and songs of said operetta "Falka" always been? A. Some in manuscript and some in book form. Q. Have they at any time been published, printed, or in any way dedicated to the public, or made in any form of publication whatsoever? A. Parts of the libretto have been published, but enough has not been published to secure us our rights in this country". Is that answer correct?

Mr. LOWENTHAL: We object to that question, on the ground that the continuation of the deposition of Mr. French was limited by the order of the Court to new matter with relation to the books offered in evidence by the defense, and that this deposition was not reopened with



a view of explaining or contradicting the testimony of the witness taken by way of deposition some two years ago.

Q.55 (By Mr. REDDING.) Well then, Mr. French, just read your own deposition taken in New York, and see if it makes sense?

A. (After reading the deposition) I have got nothing to add to this; this is quite correct.

#### CROSS-EXAMINATION

of

THOMAS HENRY FRENCH.

Q.L (By Mr. LOWENTHAL.) You say, I suppose, that on the 5th of May, 1886, you were a citizen and resident of New York City, State of New York?

A. Yes, sir.

Q.2 Samuel French is your father?

A. Yes, sir.

Q.3 And at that time was a resident of the City of London?

A. Yes, sir.

Q.4 What business relations do you bear towards Mr. Samuel French?

A. I am his partner.

Q.5 Were you his partner on the 5th of May, 1886?

A. I was.

Q.6 Were you his partner at the time mentioned in the bill of complaint in this case; on the 24th of January, 1886, were you such copartners?

A. We were.

Q.7 What was the firm name?

A. Samuel French & Son.

Q.8

Q.8 This opera "Falka", I understand, was transferred by the alleged author, Mr. Farnie, to whom?

A. To the best of my knowledge and belief it was transferred to me personally.

Q.9 Was that transfer in writing? A. It was .

Q.10 Where is it? A. I haven't the faintest idea now. It is either here in evidence in this suit, or in the New York office.

Q.11 I will call for that writing or transfer. Will you swear that that transfer was made to you personally, to Thomas H. French, of the operetta Falka now in litigation?

A. I will.

Q.12 You will now swear positively that it was not made to Samuel French? A. No, it was made to T. H. French.

Q.13 Nor to Samuel French & Son?

A. No, sir; it was made to T. H. French.

Q.14 Then the testimony of Mr. Farnie, the alleged author of the operetta Falka, that he made it to Samuel French, is not true?

Mr. REDDING: I object to that , until he shows what the testimony of Mr. Farnie is.

A. An assignment to one is equivalent to an assignment to the other. It was made to me simply because I was a resident of this country, and was in this country.

Q.15 When did you last see that assignment?

A. I could not say.

Q.16 What is the date of it?

A. I could not tell, here.



Q.17 Is it dated as alleged in the complaint on the 24th of January, 1886? A. I cannot say.

Q.18 Have you any objection to producing that assignment? A. None whatever.

Q.19 Did you have possession of that assignment in this country? Did you ever have any written assignment in your possession? A. I did.

Q.20 And you say that assignment is to Thomas H. French, and not to Samuel French? A. Yes, sir.

Q.21 And not to Samuel French & Son? A. Yes, sir.

Q.22 And you say you are prepared to produce that assignment? A. I am.

Q.23 Then Mr. Farnie is mistaken when he says in his deposition that he transferred it to Samuel French?

Mr. REDDING: I object to that question until the testimony of Mr. Farnie is given to the witness.

Q.24 To the seventeenth interrogatory of his deposition Mr. Farnie said: "The operetta was publicly performed throughout the United States by Mr. Samuel French, to whom it was assigned by me before publication. The libretto never has been published. I received profit from such performances under the agreement I made with Mr. Samuel French". Is that statement in that respect true, or what would you say?

A. The statement is perfectly true, because he made it to Mr. Samuel French for convenience. He was in London, and I was in America.

Q.25 Then the assignment was made to Mr. Samuel French?

A. No, sir; it was made to me. Mr. Samuel French

being in London could not go into court and protect our rights, but I being here could. That is the same with every play that we buy, it is made to me personally.

Q.26 To the fourteenth interrogatory Mr. Farnie said :  
"I sold all the right, title, and interest I had in the adaptation of Falka to Mr. Samuel French for his use in the United States of America only. The consideration named in the assignment was one dollar. The actual consideration was an agreed portion of the profits of the representation". Is that portion of the testimony of Mr. Farnie true?

A. Certainly it is all true. Samuel French is the same as T. H. French; they are partners.

Q.27 Then the assignment was to you as copartners?

A. It is not so <sup>+</sup>mentioned in the assignment, but all operettas are made to me personally so I can protect our rights in this country.

Q.28 For the joint benefit of yourself and father?

A. Yes, sir.

Q.29 The operetta in fact then was the property of yourself and father at the time of the commencement of this suit?

A. Yes, sir.

Q.30 In your verified bill of complaint in this suit you say, "That the dialogue and words of the songs of the said operetta Falka are now and always have been in manuscript, and have never at any time been published, printed, or in any way dedicated to the public, or made in form of publication".

A. The dialogue has never been published.



Q.31 Have the words of the songs been published?

A. They were not, to my knowledge, at that time.

Q.32 In the year 1886?

A. I could not tell the year now.

Q.33 Do you mean to say that this book, "Defendants' Exhibit C", has not been known to you to have been published in the year 1886?

A. I never saw a page in that book before to-day.

Q.34 How do you know then that these books were sold at your theatre?

A. This operetta was not produced at my theatre.

Q.35 Where was it produced?

A. At Broadstreet Theatre, Philadelphia.

Q.36 How do you know that these books were sold there?

A. I don't know that they were, but I know that is what that book is, a libretto.

Q.37 Have you ever seen the musical score of "Falka"?

A. I have.

Q.38 Has that been published and circulated?

A. Yes, sir.

Q.38 And sold in open market to whoever desires to buy?

A. Yes, sir.

Q.39 When did you first see the piano-forte score of "Falka"? A. When it was originally produced in Philadelphia.

Q.40 Then at the time of the commencement of this suit you had seen the piano-forte score?

A. That book does not contain the words of the songs.

I say in the bill of complaint, "The dialogue, and words of  
"the songs".

Q.41 Then you will admit the fact that the words of the  
songs have been published and circulated and sold in open  
market?

A. Yes, sir; the same as with any other opera.

Q.42 The entire music of the piano-forte score has  
been sold in open market prior to the commencement of this  
suit?

A. Yes, sir.

Q.43 And also the words of the songs?

A. I couldn't say as to that.

Q.44 The book marked "Exhibit C", attached to the depo-  
sition taken in London, contains a synopsis of the entire  
opera, does it not?

A. Yes, sir; an argument.

Q.45 And that publication bears date October 29, 1883;  
selling price, sixpence in London; have you observed that, Mr.  
French?

A. Yes, sir.

Q.46 And it is published by Alfred Hays? A. Yes, sir.

Q.47 Alfred Hays; is he the person you spoke of a few  
moments ago, when you said he was part owner of the opera  
"Falka"?

Mr. REDDING: The date of the publication of this  
book "Exhibit C" referred to does not appear on that  
book. Mr. Lowenthal remarked as if it did, but it is  
only a lead pencil mark on it there. I don't care to  
have the date of the publication assumed as being that,  
and as appearing there when it does not.

A. Yes, sir.



Q.48 And has been since the time of the transfer to you?

A. I could not answer that.

Q.49 When did Mr. Hays become a part owner of this opera?

A. I couldn't say as to that.

Q.50 Have you remitted to him a proportion of the royalties received from time to time?

A. I always remitted to Mr. Farnie, and he divided with Mr. Hays.

Q.51 Then there is a transfer from Mr. Farnie to Mr. Hays of some interest in this opera?

A. I believe there is, but what portion, or anything about it, I don't know.

Q.52 You only receive a portion of the proceeds of this opera?

A. That is all.

Q.53 What portion do you receive?

A. One third.

Q.54 Who receives the other?

A. Mr. H. B. Farnie.

Q.55 And who receives the other third?

A. Mr. Farnie gets the other two thirds, and makes some arrangement with Mr. Hays.

Q.56 Mr. Hays appears as the publisher of the two books, exhibits "A" and "C" attached to the London depositions?

A. Yes, sir; I believe he does.

Q.57 Have you any idea as to what kind of production of the opera "Falka" there was at the Tivoli? You didn't see it, did you?

A. I did not.

Q.58 You don't know what libretto, or what was used there, or what songs, or what music, in the production of

"Falka"?

A. No, sir; I do not.

Q.59 When did you first become acquainted with the fact of Mr. Krelling of Krelling Brothers having produced the operetta "Falka"?

A. I read it at the time in the paper; I don't know when.

Q.60 At the time of the production, or prior thereto?

A. The first part of it was an article stating how much money they had made on it, and it must have been subsequent to that time.

Q.61 That is the first thing you knew of it?

A. Yes, sir.

Q.62 Where is Mr. Steyne now, do you know?

A. I do not.

Q.63 Or Mr. McCarty? A. I don't know Mr. McCarty.

Q.64 Is Mr. McCarty in the theatrical business?

A. Not to my knowledge.

Q.65 Did you ever have any personal conversation, prior to the production of this opera, with Mr. Farnie with relation to "Falka"? A. No, I don't think I ever did.

Q.66 Did you have any conversation with Mr. Steyne with relation to the production of "Falka" in London? A. No.

Q.67 Or here; in Philadelphia?

A. I was in Philadelphia for the production, and I suppose I talked. I don't remember about it now.

Q.68 You have no recollection as to what was the purport of the conversation, or what the conversation was about, between you and Mr. Steyne, at that time?

A. Well, not further than he wanted so much money, and



how he wanted it, his salary, and so on.

Q.69 And that is all the conversation you had with him on the subject of "Falka"?

A. That is all I remember of; yes, sir.

RE-EXAMINATION

of

THOMAS HENRY FRENCH.

Q.1 (By Mr. REDDING.) Mr. French, you described this little book which is attached to the deposition of Alfred Hays on behalf of respondents, marked "Exhibit C", as being a libretto of the opera "Falka". Will you state what you mean in this instance by the word "libretto"?

A. I mean the argument, and the words of some of the songs. I could not tell whether the words of all the songs are there or not. Such a book is always sold on the production of an opera.

Q.2 Is it a book something similar to what we have sold by the boys in the lobby as "Books of the opera, books of the opera?"

A. Something similar; yes, sir.

Q.3 For what purpose are such books used?

A. Well, people liking a song want to read the words over; but it is really for the publisher to make money.

Q.4 It is used where?

A. By the people in the auditorium only.

Q.5 Does this book contain any of the dialogue, stage business, situations, acts of scenery, and so forth?

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(Question objected to by respondents, as incompetent, the book itself being the best evidence.)

A. No, it does not.

Q.6 (By Mr. LOWENTHAL.) I will now ask you, Mr. French, if you will produce that assignment from Farnie we have been referring to?

A. Yes, sir; I will do so with pleasure, if it is not already in evidence.

(The reading of the above deposition to the witness, and the signing of the same by him, are, by agreement of counsel, waived. )



I Certify that the foregoing depositions were taken pursuant to the notice, ~~Examiner's order and notice hereunto prefixed~~, at the place stated in the caption to said depositions, at the several times set forth in said depositions, in my presence, and in the presence of counsel for the respective parties to the cause in said caption entitled; that, previous to giving his testimony, each of the witnesses in said depositions named was by me duly sworn to tell the truth, the whole truth and nothing but the truth, in said cause; that said depositions were, ~~except in so far as they were taken down in writing by the Examiner~~, taken down in shorthand writing and transcribed by A. L. Brown, pursuant to stipulation and agreement of counsel; that said depositions, after being so transcribed, were read by, or by me to, the said witnesses, and signed by them, respectively, except in those cases where such reading and signing were, by agreement of said counsel, waived, as in said depositions set forth; and that I have retained said depositions for the purpose of delivering the same with my own hand to the Court for which they were taken.

Accompanying said depositions, and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein.

I further Certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In Witness Whereof, I have hereunto set my hand,  
this fourth day of February, A. D. 1891.

J. C. Knight  
Examiner in Chancery,  
U. S. Circuit Court, Dist. of Cal.